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POLITICAL SCIENCE QUARTERLY
THE JOURNAL OF PUBLIC AND INTERNATIONAL AFFAIRS

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Louis Fisher — The State Secrets Privilege: Relying on *Reynolds*

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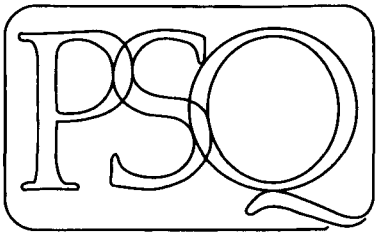

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THE JOURNAL OF PUBLIC AND INTERNATIONAL AFFAIRS

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From the Editor:

In this issue . . .

ERIC A. HEINZE compares the U.S. response to the crisis in Darfur to that of the Rwandan genocide ten years earlier. He concludes that prevailing domestic and international political realities during the debate over the Darfur crisis allowed U.S. administration officials to use the rhetoric of genocide as a substitute for taking more forceful action to stop the killings.

LOUIS FISHER analyzes the state secrets privilege, which permits the executive branch to withhold certain documents requested in litigation. In examining *United States v. Reynolds* (1953), the first Supreme Court case to recognize and uphold the privilege, he concludes that the decision presented an incoherent policy leading to judicial abdication and that the executive branch misled the Court on the content of key documents.

HILDE HAALAND KRAMER and STEVE A. YETIV argue that the UN Security Council's response to global terrorism has been more forceful and comprehensive since September 11 and that it has broken some new ground. The authors posit that although the UN remains controversial in the United States, Washington benefited from its response to September 11, as imperfect as it was.

STEPHEN J. KING focuses on how incumbent elites in the Arab world create political support during periods of authoritarian transformation. His argument highlights how these elites use certain institutions to sustain authoritarian rule.

KENDALL W. STILES and DEBORAH WELLS posit that patterns with respect to international law endorsement hold in the case of Britain's endorsement of the European Convention on Human Rights. They argue that this, however, conceals a much more complex and counter-intuitive set of causal dynamics below the surface.

DEMETRIOS JAMES CARALEY

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The Rhetoric of Genocide in U.S. Foreign Policy: Rwanda and Darfur Compared

ERIC A. HEINZE

The world is once again confronting the specter of genocide. Like Rwanda a decade before it, the crisis in the Darfur region of Sudan promises to challenge the moral conscience of those actors who made the sacred promise of "never again." The ceasefire signed in Abuja, Nigeria in May of 2006, while an important step toward ending the bloody conflict in Darfur, has not been signed by all factions to the conflict, is yet to be backed up by adequate force, and to date has had little or no effect on conditions on the ground. Thus, aside from the scarcely armed group of African Union (AU) monitors soon to be assisted by United Nations (UN) peacekeepers pursuant to the Abuja agreement, there has been little forceful action toward stopping the killings in Darfur. The United States, for its part, took the lead in condemning the Darfur atrocities as genocide, and in doing so, departed from the reasoning that informed the American diplomatic rhetorical response to Rwanda 10 years prior. That is, while the administration of Bill Clinton avoided the rhetoric of genocide in reference to the first unequivocal instance of genocide since the Holocaust, the administration of George W. Bush was quick to make this charge in Darfur amidst far more ambiguous circumstances. What accounts for this difference in rhetorical response? This article suggests that prevailing political realities, both domestic and international, account for this discrepancy, thus rendering it politically possible, and even expedient, for the Bush administration to use the rhetoric of genocide over Darfur.

Since the genocide in Rwanda of 1994, a voluminous literature has emerged seeking to explain the origins of that crisis, why the UN and its member states (especially the United States) did not intervene to stop the killing, and exactly

ERIC A. HEINZE is an assistant professor of political science and international studies at the University of Oklahoma. His scholarly articles have most recently appeared in the *Journal of Human Rights*, *Parameters*, the *Journal of Military Ethics*, *Polity*, and the *International Journal of Human Rights*. His book, *Waging Humanitarian War: The Ethics, Law and Politics of Humanitarian Intervention*, is forthcoming with SUNY Press.

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when a situation of mass murder is rightly considered "genocide."[1] Owing to the declassification of numerous U.S. State Department memos, Central Intelligence Agency briefings, and other sensitive government materials, it is now well documented that the United States had considerable knowledge of what was happening to Rwandan Tutsis and moderate Hutus in April through June of 1994. There are nevertheless important reasons that the United States did not want to get involved in Rwanda, many of which are in no small part related to the public relations debacle only months prior in Somalia. Thus, when it comes to the political maneuvering involved in "naming the crime" during the Rwanda crisis, conventional wisdom now holds that Clinton administration officials avoided using the "g word" for fear that using it would have obliged the United States to take action under the terms of the 1948 Genocide Convention.[2] The United States did not, after all, want to admit that something was transpiring that would impose a moral, if not legal, obligation to intervene. As a result, U.S. officials did not publicly utter the word "genocide" until well after it had become radically apparent to most observers that genocide had taken place. While the case for classifying the killings in Rwanda as genocide was arguably the most unambiguous since the Holocaust, even in late May of 1994—over six weeks into the killings—U.S. rhetoric on genocide still remained diluted, referring only to "acts of genocide."[3]

Fast forward nearly 10 years to the Darfur region of western Sudan. Since February of 2003, when Darfurian rebels rose up against what they perceived as increasingly heavy-handed and oppressive rule from the Islamic government in Khartoum, a brutal counter-insurgency has been underway that has resulted in hundreds of thousands of civilian deaths and millions more displaced. In this conflict, the specter of genocide was raised amidst findings that Khartoum's strategy in combating the insurgency was essentially to depopulate the countryside of "sympathetic" Darfurian civilians—mostly members of the Fur, Massaleit, and Zaghawa tribes—by arming and providing air support to Arab militias called *Janjaweed*, who would attack villages, kill, rape, and

[1] See Alain Destexhe, *Rwanda and Genocide in the Twentieth Century* (New York: New York University Press, 1995); Gérard Prunier, *The Rwanda Crisis: History of a Genocide* (New York: Columbia University Press, 1995); Philip Gourevitch, *We Wish to Inform You that Tomorrow We Will Be Killed With Our Families* (New York: Farrar, Straus, and Giroux, 1998); Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda* (Princeton, NJ: Princeton University Press, 2001); Samantha Power, *"A Problem from Hell": America and the Age of Genocide* (New York: Perennial, 2002); Michael Barnett, *Eyewitness to Genocide: The United Nations and Rwanda* (Ithaca, NY: Cornell University Press, 2002); Linda Melvern, *Conspiracy to Murder: The Rwanda Genocide and the International Community* (London: Verso, 2004); and Romeo Dallaire, *Shake Hands with the Devil: The Failure of Humanity in Rwanda* (New York: Carroll & Graf, 2005).

[2] See Barnett, *Eyewitness to Genocide*, 138–139; Destexhe, *Rwanda and Genocide*, 35; Power, *Problem from Hell*, 359; Dallaire, *Shake Hands with the Devil*, 333, 374, 395, 454; see also David Rieff, *At the Point of a Gun: Democratic Dreams and Armed Intervention* (New York: Simon & Schuster, 2005), 74–75.

[3] See Power, *Problem from Hell*, 362, especially notes 60, 61.

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forcibly displace at will.[4] Many of the displaced would starve to death in flight or die slowly of disease and malnutrition in refugee and displacement camps.

By the summer of 2004, amidst utterances of an impending genocide in Darfur by American evangelicals, African American leaders, and human rights advocates, high-level U.S. officials began to openly refer to the situation as genocide—to the delight of humanitarian interventionists, but to the confusion of students of *realpolitik* who believed the United States did not have a dog in that fight.[5] The first official semantical leap was in July of 2004, when the U.S. Congress passed a concurrent, though nonbinding, resolution condemning the violence in Darfur as genocide.[6] Secretary of State Colin Powell followed suit in September of 2004, as did President Bush during an address to the UN General Assembly less than two weeks later.[7] What is remarkable about this willingness to employ the rhetoric of genocide is the extent to which it stands as a radical departure from the reasoning that led the Clinton administration to avoid using such language in 1994. Especially perplexing is that while the Clinton administration sought to deny what (they and) the international community knew about genocide in Rwanda, the Bush White House sought to brand the situation in Darfur as genocide despite significant uncertainty as to whether this was, in fact, the case. Bush continues to do so despite a UN inquiry in January of 2005 that concluded that genocide had *not* taken place.[8] With massive troop commitments in Afghanistan and Iraq, it is no surprise that there would be little appetite in Washington for humanitarian intervention, nation building, or other military involvement in Darfur.[9] The Bush administration would thus seemingly be poorly served by openly referring to the Darfur crisis as genocide if doing so triggers an expectation and obligation to intervene to "prevent and punish" the crime—something the United States has

[4] See Human Rights Watch, *Darfur in Flames: Atrocities in Western Sudan* (New York: Human Rights Watch, 2004); Human Rights Watch, *Darfur Destroyed: Ethnic Cleansing by Government and Militia Forces in Western Sudan* (New York: Human Rights Watch, 2004); see also Alex de Waal, "Briefing: Darfur, Sudan: Prospects for Peace," *African Affairs* 104 (January 2005): 127–135; Alex de Waal, "Who Are the Darfurians? Arab and African Identities, Violence, and External Engagement," *African Affairs* 104 (April 2005): 181–205; Gerard Prunier, *Darfur: The Ambiguous Genocide* (Ithaca, NY: Cornell University Press, 2005); Julie Flint and Alex de Waal, *Darfur: A Short History of a Long War* (New York: Zed Books, 2005).

[5] "'Realism' and Darfur," *The Washington Post*, 1 August 2004.

[6] U.S. House, *Declaring Genocide in Darfur, Sudan,* 108th Cong., 2nd sess., 2004, H. Doc. 467; U.S. Senate, *Declaring Genocide in Darfur, Sudan,* 108th Cong, 2nd sess., 2004, S. Doc. 133.

[7] Steven R. Weisman, "Powell Says Rapes and Killings in Sudan Are Genocide," *The New York Times*, 10 September 2004; address by President Bush to the United Nations General Assembly, *United States Mission to the United Nations*, 21 September 2004, accessed at http://www.usunnewyork.usmission.gov/04gwb0921.htm, 5 July 2005.

[8] Report of the International Commission of Inquiry on Darfur to the United Nations Secretary General (Geneva, United Nations, 25 January 2005), 4, accessed at http://www.un.org/News/dh/sudan/com_ing_darfur.pdf, 18 June 2007.

[9] "Bush and Kerry on the Issue of Sudan," *Associated Press*, 28 October 2004.

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not demonstrated the will to undertake. Why, then, were U.S. officials so quick to name the crime absent the political will to intervene to stop it?

This article begins by establishing the Rwandan crisis of 1994 as the paradigmatic example of the crime of genocide since the Holocaust and examining the U.S. response to it. There are, of course, important differences between Rwanda and Darfur, though it is evident in both cases that the United States was not and has not been prepared to put its troops in harm's way to stop the brutality. This begs the question as to what differences between Rwanda and Darfur account for the Bush administration's use of the rhetoric of genocide without an expectation of intervention in Darfur, as contrasted to the Clinton administration's conscious avoidance of such language so as not to impose upon itself this unwanted obligation in Rwanda. Examining events between the spring of 2004 and late 2005, I thus investigate the factors in U.S. politics that led to the official characterization of the Darfur crisis as genocide. Here I highlight the influence of Congress's concern over Khartoum's "other" civil war against rebels in southern Sudan, the roles of the evangelical Christian lobby and the Black Congressional Caucus, and the coinciding of these events with the 10-year anniversary of the Rwandan genocide. Finally, I explore what factors account for the general lack of domestic and international pressure on the U.S. government to follow up its finding of genocide in Darfur by taking forceful action to put an end to it, as the Clinton administration reasoned would be expected of it had it concluded that genocide was occurring in Rwanda. Here I point to the understanding of the obligations under the Genocide Convention, the influence of the Iraq war and the broader war on terrorism, and the desire to not disrupt the peace process in Sudan's North–South civil conflict. I ultimately conclude that once domestic constituencies began pressuring the Bush administration to take action over Darfur, the rhetoric of genocide was pursued *as a substitute* for more forceful action, for which there became less of an expectation because of competing imperatives in the Sudan as well as a general international uneasiness about American military interventionism.

Rwanda as the Genocide Paradigm

Since the story of the Rwandan genocide has been recounted in numerous studies and academic and journalistic accounts,[10] I will not recount that story in

[10] In addition to the analyses cited above, see also Arthur J. Klinghoffer, *The International Dimensions of Genocide in Rwanda* (New York: New York University Press, 1998); John A. Berry and Carol Pott Berry, eds., *Genocide in Rwanda: A Collective Memory* (Washington DC: Howard University Press, 1999); Christopher C. Taylor, *Sacrifice as Terror: The Rwandan Genocide of 1994* (New York: Berg, 1999); Bruce D. Jones, *Peacemaking in Rwanda: The Dynamics of Failure* (Boulder, CO: Lynne Reinner, 2001); and Alan J. Kuperman, *The Limits of Humanitarian Intervention: Genocide in Rwanda* (Washington DC, Brookings Institution of Peace, 2001).

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detail here, but, rather, briefly outline the politics surrounding U.S. policy. It should be noted, however, that the crisis in Rwanda stands as the first *unequivocal* case of genocide since the Holocaust. The crime of genocide has a precise legal definition, the use of which requires that the victims be members of a "national, ethnical, racial or religious group," and that the relevant acts be committed with the "intent to destroy [the group] in whole or in part."[11] It is now generally accepted in the international legal community that the horrors of Rwanda met this definition.[12] As early as 19 April 1994—just over two weeks into the crisis—non-governmental organizations (NGOs), the popular press, and the commander of the UN peacekeepers in Rwanda, Romeo Dallaire, began using the term "genocide" to describe what was happening in Rwanda.[13] The evidence seemed sufficient to warrant its use: using the radio waves to incite and recruit killers and an anachronistic identity card system to identify ethnic Tutsis, a well-executed plan involving the Hutu-dominated army, civil service, Gendarmerie, and Interahamwe (a Hutu militia) was initiated to destroy Rwanda's Tutsis.[14] In the words of one radio broadcast intended to incite murder, "We have to act . . . wipe them all out."[15] The use of the "g word" to describe the crisis in Rwanda, however, triggered a firestorm of controversy at the UN and in world capitals.

With the failure of Somalia in such recent memory, the Clinton administration had no desire to get bogged down in another conflict in Africa. The doctrinal lynchpin for this policy was presidential decision directive 25 (PDD-25), developed against the backdrop of the Somalia meltdown, that severely circumscribed the conditions under which the United States would participate in peacekeeping. Among other things, PDD-25 required that U.S. participation in any UN operation must "advance US interests," while also limiting U.S. participation in UN missions, as well as U.S. support for other states that intend to carry out UN-sanctioned missions.[16] Though not officially

[11] Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), 9 December 1948, 78 UNTS 277, Article II, accessed at http://www.unchr.ch/html/menu3/b/p_genoci.htm, 18 June 2007.

[12] This is evidenced by the existence of the International Criminal Tribunal for Rwanda (ICTR), the purpose of which is to try individuals for the crimes of genocide, crimes against humanity, and certain war crimes. See Statute of the International Criminal Tribunal for Rwanda (ICTR Statute), 22 February 1995, UN Doc. S/RES/955, Article 2. In 1998, the ICTR issued its first conviction for the crime of genocide in *Prosecutor v. Akayesu* (Case No. ICTR-96-4-T), Judgment, 2 September 1998.

[13] Dallaire, *Shake Hands with the Devil*, 333; Barnett, *Eyewitness to Genocide*, 34; Power, *Problem from Hell*, 357.

[14] See generally Gourevitch, *We Wish to Inform You*.

[15] Organization of African Unity (OAU), *Rwanda: The Preventable Genocide* (Organization of African Unity, 2000), accessed at http://www.africa_union.org/official/_documents/reports/Report_rowanda_genocide.pdf, 18 June 2007.

[16] "Clinton Administration Policy on Reforming Multilateral Peacekeeping Operations, Presidential Decision Directive 25," 3 May 1994, accessed on the website of the Federation of American Scientists at http://www.fas.org/irp/offdocs/pdd25.htm, 14 September 2005.

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implemented until 4 May, this directive was used as an informal guide for U.S. policy toward Rwanda and was augmented by a general indifference regarding Rwandan affairs. Some months prior, in response to requests by the African Affairs Bureau in the Pentagon to consider Rwanda a potential trouble spot, high-level administration officials are reported to have responded, "Take [Rwanda] off the list . . . US national interest is not involved . . . just make it go away."[17] It is thus no surprise that a matter of days after the genocide began, the response of the United States and other Western states was to evacuate their nationals from embassies and diplomatic missions. U.S. Secretary of State Warren Christopher commented that evacuating U.S. nationals was "the prudent thing to do"[18]—a general sentiment of apathy that was echoed by influential members of Congress such as Senator Robert Dole (R-KS), who commented that "the Americans are out, and as far as I'm concerned, in Rwanda, that ought to be the end of it."[19] On 21 April, around the time NGOs and the media began openly entertaining the possibility of genocide, the UN Security Council voted unanimously to reduce the number of UN peacekeepers in the United Nations Assistance Mission for Rwanda (UNAMIR) from an already-anemic 2,100 to a token force of 270, while also further limiting its mandate to the principal task of negotiating a cease-fire between the belligerents.[20]

It was only after the emasculation of UNAMIR—when the signs of genocide became increasingly undeniable, with deaths tolls reaching an estimated 200,000—that the UN Security Council began seriously considering whether genocide was actually taking place.[21] While the representatives from the Czech Republic and New Zealand publicly entertained the possibility of genocide, the United States took the lead position in opposing the use of this strong rhetoric, finding no shortage of support from other members of the Council. This was largely because there was no intervention force ready and willing to invade Rwanda to stop the killing, even though the prospect of genocide had caused a moral groundswell of support for action among the advocacy community. As Michael Barnett hypothesizes, "The insinuation was that to make this discursive move would only expand the gap between the moral imperative and the lack of action."[22] Furthermore, there was concern among certain Council members that talking about genocide would not only undermine the UN's neutrality on the ground, it would also dissuade the belligerents from returning to the terms of the negotiated cease-fire, the Arusha Accords.[23]

[17] Cited by Power, *Problem from Hell*, 342.
[18] Ibid., 352.
[19] Ibid.
[20] United Nations Security Council Resolution 912, 21 April 1994, UN Doc. S/RES/912.
[21] Barnett, *Eyewitness to Genocide*, 131.
[22] Ibid., 134.
[23] See Julia Preston, "'This Eerie Calm': The Rwanda Situation Confounds the Security Council," *The Washington Post*, 9 May 1994.

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Official thinking in Washington followed a similar logic, with strict adherence to PDD-25. The official U.S. line was that the killings in Rwanda were not genocide, but part of the resumption of hostilities in the civil war, a situation that by definition precludes the use of peacekeepers (as outlined in the Council's own statement on the conditions under which a peacekeeping operation could be established).[24] Pushing ahead with a UN operation, U.S. officials reasoned, would invite a disaster of the kind witnessed in Somalia a few months earlier.[25] After all, the extreme unlikelihood of a ceasefire meant that any potential UN intervention—be it a peacekeeping operation or a Chapter VII enforcement operation—would be thrust into a civil war. U.S. policy was therefore informed by the need to temper the unbridled UN ambitions that U.S. officials believed had brought about the debacle in Somalia. To prevent the UN from dragging the United States into another failed peacekeeping operation, pressure was intense to "pick a winner" and save UN peacekeeping for when it could succeed.[26] But Rwanda had "loser" written all over it *á la* Somalia, so the policy was to reduce, not reinforce, the UN presence. After all, no public official wanted to *again* explain why American soldiers were dying in faraway Africa, where the United States had no compelling security interest.

While some U.S. officials voiced concerns that using the word "genocide," and then being seen as doing nothing, would somehow affect the upcoming congressional elections in November, the overarching concern was that referring to the situation as genocide would cause demands for a U.S. response that the administration was not prepared to undertake.[27] However, virtually no constituencies in the United States gave the Clinton administration the impression that it would pay a political price for failing to rescue the Rwandans; and part of the reason for avoiding the rhetoric of genocide was to keep it this way. Paradoxically, then, U.S. officials "simultaneously believed that the American people would oppose US military intervention [in Rwanda] and feared that the public might support intervention if they realized genocide was underway."[28] This indeed proved to be true, as it was only *after* the revelation of genocide that it became possible to identify a constituency for action in Rwanda.[29]

[24] Paul Lewis, "UN Backs Troops for Rwanda but Terms Bar Any Action Soon," *The New York Times*, 17 May 1994; Barnett, *Eyewitness to Genocide*, 135.

[25] Hearing of the International Security, International Organization and Human Rights Subcommittee of the House Foreign Affairs Committee, 103rd Cong., 2nd sess., 1994.

[26] Barnett, *Eyewitness to Genocide*, 163.

[27] National Security Council official Susan Rice, quoted in Power, *Problem from Hell*, 359; Douglas Jehl, "Officials Told to Avoid Calling Rwanda Killings 'Genocide,'" *The New York Times*, 10 June 1994.

[28] Power, *Problem from Hell*, 373.

[29] Michael R. Gordon, "US to Supply 60 Vehicles for UN Troops in Rwanda," *The New York Times*, 16 June 1994; see also Power, *Problem from Hell*, 374.

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U.S. officials went to great lengths in the semantical charade to avoid the rhetoric of genocide. Especially revealing is the now well-known discussion paper on Rwanda, dated 1 May and prepared by an official in the Office of the Secretary of Defense, that read: "1. Genocide Investigation: Language that calls for an international investigation of human rights abuses and possible violations of the genocide convention. *Be Careful. Legal at State was worried about this yesterday—Genocide finding could commit USG* [the U.S. Government] *to actually 'do something.'*"[30] Against this backdrop, one can better understand the maladroit dance around the term "genocide" by the State Department spokesperson when asked to comment on whether the killings in Rwanda constituted genocide:

> As I think you know, the use of the term "genocide" has a very precise legal meaning although it's not strictly a legal determination. There are other factors in there as well. In looking at a situation, to make a determination about that, before we begin to use that term, we have to know as much as possible about the facts of the situation .... This is a more complicated issue to address, and we're certainly looking into this extremely carefully right now. But I'm not able to look at all of those criteria at this moment and say, "yes/no." It's something that requires very careful study before we can make a final determination.[31]

It was six weeks into the genocide, on 21 May, before U.S. officials gave the go-ahead to call the killings by their rightful name, and even then Secretary Christopher hopelessly qualified the permission given to U.S. officials, referring ambiguously to "acts of genocide," and refusing to allow characterization of any specific incident in Rwanda as genocidal.[32] Nevertheless, from the point of view of a policy that sought to avoid U.S. involvement in either peacekeeping or enforcement operations in Rwanda, the U.S. decision to consciously avoid the inflammatory rhetoric of genocide makes sense, even if it is morally repugnant. Although it is now understood that the Genocide Convention does *not* require military intervention to halt genocide (even though some in the administration perhaps did not realize this at the time), administration officials were probably correct to assume that both the domes-

[30] Office of the Deputy Assistant Secretary of Defense for Middle East/Africa Region, Department of Defense, "Discussion Paper: Rwanda" (Declassified), 1 May 1994, accessed on the website of The National Security Archive at http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB53/index.htm, 20 September 2005. Italics original.

[31] Department of Defense Daily Press Briefing, 28 April 1994, accessed on the website of the Department of State Federal Depository Library at http://dosfan.lib.uic.edu/ERC/briefing/daily_briefings/1994/9404/940428db.html, 20 September 2005.

[32] Action memorandum from Assistant Secretary of State for African Affairs George E. Moose, et al. to Secretary of State Warren Christopher, Subject: "Has Genocide Occurred in Rwanda?" (Declassified), 21 May 1994, accessed on the website of The National Security Archive at http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB53/index.html, 20 September 2005; see also Power, *Problem from Hell*, 362.

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tic and international public would not bother with legal niceties and would instead focus on the strong moral obligation to "never again" allow genocide to occur. So while the pressure on the administration to name the crime was intense, if it did so, administration officials reasoned, the pressure to intervene would be even more intense, particularly since the United States is one of few states with the assets to execute such an emergency intervention. Thus, if Somalia was any indication, the political risks of not acting were less than the political risks of acting, and the Clinton administration had much to lose and little to gain from an intervention in the heart of Africa. Since naming the crime would have pressured the United States to do just this, the crime was not named.

Darfur: Rethinking Conventional Wisdom

While the atrocities in Darfur had been raging since February of 2003, it took nearly a year for international activity to reach an effective pitch. The popular press and certain NGOs were the first to characterize the Darfur killings as genocide,[33] but a true sense of international urgency over Darfur only became apparent in April of 2004, when UN Secretary-General Kofi Annan made a direct comparison between the Darfur crisis and the 1994 Rwandan genocide. Speaking at the UN Human Rights Commission on the tenth anniversary of the Rwandan genocide, the Secretary-General stated that "whatever term it uses to describe the situation, the international community cannot stand idle... [but] must be prepared to take swift and appropriate action. By 'action' in such situations I mean a continuum of steps, which may include military action."[34] With the rhetoric of genocide now raised, and with high-profile personalities like the UN Secretary-General drawing comparisons between Darfur and the world's (and the U.S.'s) derelict response to genocide 10 years prior—and even musing about a possible need for military intervention in Darfur—the U.S. foreign policy establishment undoubtedly began to pay closer attention to the events in Darfur.

Despite the considerable attention given to the Darfur crisis by U.S. officials, there are several factors indicative of the Bush administration's desire to avoid military involvement in Darfur, in either a direct or supportive role. First and foremost is the U.S. military commitment in Iraq and Afghanistan. On 22 April 2004, Samantha Power testified before the House

[33] See Paul D. Williams and Alex J. Bellamy, "The Responsibility to Protect and the Crisis in Darfur," *Security Dialogue* 36 (March 2005): 27–47; among journalistic accounts, see Eric Reeves, "Unnoticed Genocide," *The Washington Post*, 25 February 2004; Nicholas D. Kristof, "Will We Say 'Never Again' Yet Again?" *The New York Times*, 27 March 2004.

[34] Kofi Annan, Action Plan to Prevent Genocide, Speech Delivered to the UN Human Rights Commission, 7 April 2004, UN Press Release, SG/SM/9197 AFR/893 HR/CN/1077, accessed at http://www2.unog.ch/news2/documents/newsen/sgo4003e.htm, 18 June 2007.

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International Relations Committee that it would require 10,000 troops to effectively stop the killing in Darfur.[35] Military realities being what they are, only the United States and possibly a few European states have the lift capacity to rapidly deploy such a force.[36] But with massive troop commitments in Iraq and Afghanistan, it would seem unlikely that U.S. officials would rush to volunteer U.S. forces for such a task. By early July of 2004, Defense Department officials revealed that they had no plans to deploy U.S. forces to Darfur any time soon, not even to support the delivery of humanitarian relief.[37]

Perhaps even more revealing were prior comments by the United States Agency for International Development administrator, Andrew Natsios, in a 27 April press conference. When asked if the United States would support a UN-backed humanitarian intervention if the Sudanese government continued to abet the killings in violation of the negotiated ceasefire (the N'Djamena Agreement, signed between the Sudanese government and Darfurian rebels in Chad on 8 April), Natsios responded that there were "no alternatives" other than a successful implementation of the ceasefire and that "troops are not going to help us right now."[38] It thus seems reasonably clear that from the beginning of the crisis, Bush administration officials had little desire to commit the United States to providing material support for peacekeeping or enforcement action in Darfur, much less take it upon itself to intervene.

Naming the Crime

Members of Congress were the first among U.S. public officials to take the situation in Darfur seriously and thus were the first government officials to characterize the situation as "genocide" in official capacity and public fora. As far as I have been able to ascertain, the first U.S. official to publicly speak of "genocide" in explicit reference to the killings in Darfur was Frank Wolf (R-VA) on the floor of the House on 2 April 2004.[39] Members of the Senate,

[35] Committee on House International Relations Subcommittee on Africa, Testimony of Samantha Power, 108th Cong., 2nd sess., 2004.

[36] See John Prendergast, "Sudan's Ravines of Death," *The New York Times*, 15 July 2004; see also the views of Mark Schneider, Senior Vice President of the International Crisis Group, as quoted in Helen Fessenden, "Lawmakers Seek Viable Solution to Sudan's Humanitarian Crisis," *CQ Weekly*, 3 July 2004, 1638.

[37] Fessenden, "Lawmakers Seek Viable Solution," 1638.

[38] "United States Policy in Sudan," remarks of USAID Administrator Andrew Natsios, Special Advisor for Sudan Policy Michael Ranneberger, and USAID Assistant Administrator Roger Winter, 27 April 2004, accessed on the website of the U.S. Department of State at http://www.state.gov/p/af/rls/rm/31856.htm, 27 September 2005.

[39] "Stop the Killing in Sudan," remarks of Frank R. Wolf in the U.S. House of Representatives, 108th Cong., 2nd sess., *Congressional Record* 150 (2 April 2004): E 518.

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such as Mike DeWine (R-OH), John McCain (R-AZ), and Jon Corzine (D-NJ), also subsequently invoked the term numerous times in reference to Darfur.[40] By June, members on both sides of the aisle began using this strong rhetoric, and on 25 June, a bipartisan roster of 52 Senators sent a letter to Secretary of State Colin Powell urging an increase in assistance to Darfur, targeted sanctions, a travel ban, freezing of assets, and a UN resolution calling for robust monitoring and peacekeeping.[41] These efforts ultimately led President Bush to dispatch Secretary Powell to Darfur to investigate the killings, where he arrived on 30 June.[42] By this time, however, the Darfur crisis had gained much momentum in Congress, which culminated when both chambers adopted concurrent, nonbinding resolutions on 22 July condemning the atrocities in Darfur as "genocide" and asking the President to do the same and to take action in conjunction with the international community to stop the violence.[43] Two months later, on 9 September, Powell declared to the Senate Foreign Relations Committee that he and his investigative team had concluded "that genocide has been committed in Darfur, and that the government of Sudan and the Janjawid [sic] bear responsibility, and that genocide may still be occurring."[44] This sentiment was echoed by the President as he addressed the UN General Assembly on 21 September.[45]

Sudan's "other" civil war. The politics in Congress that led to the use of the rhetoric of genocide in reference to Darfur have their origins in Congress's preoccupation with other events in the Sudan—namely, the Sudanese government's brutal counter-insurgency against the Sudan People's Liberation Army/Movement (SPLA/M). The SPLA/M rebels had been fighting the Islamist government since 1983, defending the predominantly non-Arab and non-Muslim populations in the southern provinces (referred to by the media as "Black" or "African" Sudanese) from the government's policies of forced "Islamization" and "Arabization." While this is not the place for a historical treatment of the "North–South" civil war in Sudan, this conflict has frequently been characterized as having certain racial and/or religious undertones. The Islamic regime in Khartoum has for decades pursued brutal policies toward the mostly "African" (contrast "Arab") and Christian and animist (practitioners of

[40] Helen Fessenden, "The Semantics of 'Genocide' and How it Pertains to Sudan," *CQ Weekly*, 3 July 2004, 1639.

[41] Ibid.

[42] Glenn Kessler, "Powell, in Sudan, Presses for Action," *The Washington Post*, 1 July 2004.

[43] House Concurrent Resolution 467, Senate Concurrent Resolution 133.

[44] *Hearing of the Senate Foreign Relations Committee on the Current Situation in Sudan and Prospects for Peace*, Testimony of Secretary of State Colin Powell, Federal News Service, 9 September 2004.

[45] Bush, *United States Mission*.

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traditional tribal faiths) southern populations.[46] The President of Sudan, Omar Bashir, at one point declared this campaign against the southern rebels a holy war and has since directed the armed conflict against civilians, pursuing scorched-earth tactics, forced displacement, enslavement, rape, mass murder, and induced famine.

The fact that Sudan's civil war had elements of religious persecution of Christians and the enslavement of "Blacks" made it of particular concern to evangelical and African American constituencies in the United States. As Allen Hertzke has noted, "The plight of the southern Sudanese people would have remained in the backwater of American concern had not the Christian solidarity movement picked up the case."[47] As a result, numerous influential members of Congress with strong evangelical bases took up what became informally known as the faith-based Sudan coalition, which included the likes of Tom Tancredo (R-CO), Spencer Bachus (R-AL), and Donald Payne (D-MD) in the House, and Sam Brownback (R-KS) and Bill Frist (R-TN) in the Senate.[48] The efforts of the Congress toward alleviating the persecution of Black Christians in Sudan brought about landmark legislation such as the International Religious Freedom Act of 1998, and ultimately, the Sudan Peace Act of 2002.

President Bush, also with a strong evangelical base, strongly supported the initiatives of Congress toward ending Sudan's civil war, proclaiming that his administration would place religious persecution and atrocities in Sudan at the forefront of his foreign policy agenda.[49] The President followed through with his pledge to address Africa's longest running civil war when he appointed John Danforth, an Episcopal minister and former senator from Missouri, as his special envoy. Bush's hometown of Midland, Texas (where several churches have sister congregations in Sudan) even hosted an annual evangelical event in 2001 dedicated to ending the persecution of Christians the world over, wherein Sudan was the focus.[50] It was thanks to this sudden surge of U.S. involvement in the Sudan under the Bush administration that peace talks were allowed to move forward to end the North–South conflict. As I argue below, ending Sudan's civil war, and with it the persecution of Christians in southern Sudan, would be the primary objective of U.S. foreign policy toward Sudan up

[46] See generally, Douglas H. Johnson, *The Root Causes of Sudan's Civil War* (Bloomington: Indiana University Press, 2003).

[47] Allen Hertzke, *Freeing God's Children: The Unlikely Alliance for Global Human Rights* (Lanham, MD: Rowman & Littlefield, 2004), 246.

[48] Ibid., 270–271.

[49] "Bush Condemns Suppression of Religious Freedom in Sudan," *The New York Times*, 4 May 2001.

[50] Samantha Power, "Dying in Darfur: Can the Ethnic Cleansing in Darfur be Stopped?" *The New Yorker*, 30 August 2004, accessed on the website of *The New Yorker* at http://www.newyorker.com/fact/content/?040830fa_fact1, 1 October 2005.

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until and even after the signing of the final North–South peace agreement on 9 January 2005.[51]

From southern Sudan to Darfur. As a result of evangelical zeal for ending the persecution of Christians in southern Sudan, when the crisis in Darfur erupted in 2003, Sudan already had an unusually attentive constituency in Washington. The timing of the U.S.'s and international community's seizing of events in Darfur is also telling. Congressman Wolf's comments raising the prospect of genocide in Darfur on the floor of the House were almost exactly 10 years after the start of the genocide in Rwanda. What followed on Capitol Hill throughout the months of April and May of 2004 were numerous statements, from members of all political stripes, that made direct comparisons between Darfur and Rwanda 10 years prior. Such proclamations were made by Edward Kennedy (D-MA),[52] John McCain (R-AZ),[53] Jon Corzine (D-NJ),[54] Bill Frist (R-TN), Tom Daschle (D-ND), Sam Brownback (R-KS), and Joe Biden (D-DE),[55] to name just a few. Senator Brownback even broached the possibility of U.S. military involvement, though only as part of a broader effort under UN or North Atlantic Treaty Organization (NATO) sponsorship.[56] In any case, Darfur now had the full attention of Congress, and the concern over the North–South conflict had now spilled over into a concern over events in Darfur. Evangelical personalities such as Franklin Graham played no small part in convincing Congress and the President that Sudan's problems were not over just because progress had been made in peace talks between Khartoum and the SPLA/M.[57] In August of 2004, nearly 50 religious leaders organized by the National Association of Evangelicals called on the President to take "swift action" to stop the genocide in Darfur, including delivering humanitarian aid, considering military options, and working to remove Sudan from the UN Human Rights Com-

[51] The Comprehensive Peace Agreement was signed by the government of Sudan and the SPLA/M on 9 January 2005.

[52] "On Sudan," remarks of Edward Kennedy, 108th Cong., 2nd sess., *Congressional Record* 150 (29 April 2004): S 4678.

[53] Executive Session, comments of John McCain, et al., 108th Cong., 2nd sess., *Congressional Record* 150 (6 May 2004): S 4951.

[54] "Sudan Darfur Crisis," remarks of Jon Corzine, 108th Cong., 2nd sess., *Congressional Record* 150 (6 May 2004): S 4945.

[55] "Condemning the Government of the Republic of Sudan," remarks of Bill Frist, Tom Daschle, Sam Brownback, and Joseph Biden, 108th Cong., 2nd Sess., *Congressional Record* 150 (6 May 2004): S 4931.

[56] Fessenden, "Lawmakers Seek Viable Solution," 1638.

[57] The Naivasha Agreement, concluded 26 May 2004, was a preliminary peace agreement that established a ceasefire between the Sudan Government and the SPLA/M. See "Never Again? Genocide in Sudan Tests our Commitment to Justice," *Christianity Today*, 3 August 2004, accessed on the website of *Christianity Today* at http://www.christianitytoday.com/ct/2004/009/0.33.html, 4 October 2005.

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mission.[58] Thus, the same evangelical constituency that was so instrumental in persuading Congress and the President to act to end the persecution and enslavement of Christians in southern Sudan was now pushing for action on behalf of non-Christians in Darfur.

The African American leadership was also influential in putting Darfur front and center in U.S. foreign policy circles. By this time, the Darfur crisis was widely portrayed as "Arab on African" violence in the U.S. and other Western media, thus transferring to the Darfur crisis an identity frame similar to that which prevailed in the North–South conflict.[59] In particular, the issue of enslavement, prevalent in both conflicts, served to draw the African American community into a coalition with evangelicals, further contributing to the spill-over of concern from the North–South conflict to Darfur.[60] In July, members of the Congressional Black Caucus demanded an end to the genocide in Darfur, organizing a protest in front of the Sudanese embassy in Washington, wherein Congressmen Charles Rangel (D-NY), Bobby Rush (D-IL), and Joe Hoeffel (D-PA) were among those arrested by police.[61]

Rhetoric Absent Action: The Intervention that Wasn't

Despite the efforts of the peculiar bedfellows of evangelicals, prominent African Americans, and even the human rights advocacy community in raising awareness and concern over the crisis in Darfur—and even despite the subsequent rhetoric of genocide by the U.S. Congress, Secretary of State, and President—these efforts did not compel decisive action on the part of the United States to end the suffering in Darfur. Even before Congress approved the genocide resolution, Senators Brownback and Corzine had attempted to qualify the language in the resolution by asserting that the purpose of the resolution was not to oblige the United States to intervene in Darfur, but to "add moral weight to efforts to pass a United Nations resolution."[62] The Secretary of State's remarks before the Senate Foreign Relations Committee likewise downplayed any obligation to intervene, as Secretary Powell insisted that despite his finding of genocide in Darfur, "no new action is dictated by [such a] determination" and that "the most practical contribution we can make . . . is to do everything we can to increase the number of African Union

[58] Alan Cooperman, "Evangelicals Urge Bush to Do More for Sudan," *The Washington Post*, 3 August 2004; statement to President George W. Bush, National Association of Evangelicals 2 August 2004, accessed on the website of the National Association of Evangelicals at http://www.nae.net/images/darfurbush.doc, 4 October 2005.

[59] See de Waal, "Who Are the Darfurians," 199–202.

[60] Allen D. Hertzke, "The Shame of Darfur," *First Things* 156 (October 2005): 16–22.

[61] Brian Naylor, "Lawmakers Arrested at Sudan Protest," *All Things Considered*, National Public Radio Broadcast, 25 July 2004.

[62] Alex Barker, "Bush Faces Pressure on Sudan 'Genocide,'" *Financial Times*, 14 July 2004.

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monitors."[63] President Bush likewise danced around the issue of a military response to the discovery of genocide in Darfur. In a presidential debate in September of 2004, Bush downplayed calls for intervention, stating that "we shouldn't be committing troops. We ought to be working with the African Union to do so."[64] So unlike the Clinton administration during the Rwanda crisis, the Bush administration—after some initial hesitancy to use the rhetoric of genocide—did not perceive this semantical move as conferring an obligation to intervene in Darfur. In addition, the political pressure on the Bush administration to actually intervene in Darfur to avert genocide was considerably less than that which the Clinton administration reasoned would have been directed toward it, had it admitted genocide was occurring in Rwanda. The reasons for these developments are several-fold.

Obligations in the Genocide Convention. First is the issue of the precise nature of the legal obligations under the Genocide Convention. During the Rwanda crisis, numerous analysts were of the opinion that a designation of genocide would commit the United States to intervening militarily to stop the killing.[65] Such confusion over the precise obligation conferred by the Genocide Convention is evidenced by the aforementioned Defense Department discussion paper that expressed concern that a finding of genocide in Rwanda might commit the U.S. government to "actually 'do something.'"[66] This, of course, was ostensibly the reasoning that led Clinton administration officials to clumsily dance around using the term in the first place.

In reality, of course, the Genocide Convention confers no obligation on its state parties to physically intervene to stop genocide. The text of the treaty states that "the Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to *prevent and to punish*."[67] Original and secondary sources on the Genocide Convention now suggest that the treaty does *not* confer an *obligation* to intervene militarily. Rather, Article VIII says that states "*may* call upon the competent organs of the United Nations to take such action . . . as they consider appropriate for the prevention and suppression of acts of genocide."[68] Likewise, reference to the *travaux préparatoires* suggests that the consensus among

[63] Senate Foreign Relations Committee, testimony of Secretary of State Colin Powell.

[64] Transcript of the Presidential Debate between President George W. Bush and Senator John Kerry, Commission on Presidential Debates, 30 September 2004, accessed at http://www.debates.org/pages/trans2004a.html, 11 October 2005.

[65] See, for example, Rieff, *Point of a Gun*, 74–75.

[66] Office of the Deputy Assistant Secretary of Defense for Middle East/Africa Region, Department of Defense, "Discussion Paper: Rwanda."

[67] Genocide Convention, Article I, emphasis added.

[68] Ibid., Article VIII, emphasis added; see also William A. Schabas, *Genocide in International Law* (Cambridge, UK: Cambridge University Press, 2000), 448–454.

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the negotiators of the Draft Convention was that their objective on the matter of prevention and punishment was to debate whether and the extent to which "states [should] provide for the prevention and punishment [of genocide] in their national legislatures."[69] It is thus highly unlikely that the drafters of the Convention intended to create an obligation to physically intervene to prevent or punish the crime of genocide.

Thus, when Bush administration officials began using the rhetoric of genocide to describe Darfur, accompanied by no intention whatsoever of intervening, they arguably had a better understanding of the precise nature of the legal obligation under the Genocide Convention than had Clinton administration officials during Rwanda. It seems hard to believe, however, that the international legal staff in the State Department in 1994 had never given close examination to the Convention text and were therefore unaware of the escape clauses that the Bush administration would invoke 10 years later. Evidence nonetheless belies this assertion, for if State Department officials had been confident in 1994 that the Convention conferred no such obligation, the concerns expressed in the various declassified memos would have been unfounded. Perhaps these officials were attempting to make the strongest case possible for not invoking the rhetoric of genocide, or were even anticipating the legal reasoning of the press or of other governments that might try to interpret the Convention in a way that would compel U.S. action or otherwise embarrass the U.S. government for reneging on its promise of "never again." In any case, despite claims in the popular press a decade later that a finding of genocide in Darfur "would compel a no-holds-barred intervention,"[70] Bush administration officials knew better. This was demonstrated by Secretary Powell when he proclaimed to the Senate that the United States was fulfilling its obligation to "prevent and punish" genocide under Article VIII of the Convention by "propos[ing] that the next UN Security Council resolution on Sudan request a UN investigation into all violations of international humanitarian law and human rights law that have occurred in Darfur."[71] In addition, in the summer and autumn of 2004, the Bush administration was dealing with both domestic and international constituencies that were much more willing to accept a "strict con-

[69] Official Records of the Third Session of the General Assembly, Part I, Summary Records of the Meetings of the Sixth Committee (Paris, United Nations, 1948), 22; see also Eric A. Heinze, "Law, Force, and Human Rights: The Search for a Sufficiently Principled Legal Basis for Humanitarian Intervention," *Journal of Conflict Studies* 24 (Winter 2004): 5–32.

[70] G. Jeffrey MacDonald, "In Sudan Crisis, a Duty to Intervene?" *Christian Science Monitor*, 21 July 2004.

[71] Hearing of the Senate Foreign Relations Committee, Testimony of Secretary of State Colin Powell; Nicholas D. Kristof, "A Wimp on Genocide," *The New York Times*, 18 September 2005; see also United Nations General Assembly, 2005 World Summit Outcome, UN Doc. A/60/L.1, 15 September 2005.

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structionist" interpretation of the Genocide Convention because, for reasons explained below, such constituencies were not nearly as enthusiastic about American and/or Western interventionism as they might have been in the spring of 1994.

U.S./UN disagreement over genocide. Before getting to these issues, however, it is important to address the empirical question as to whether the crisis in Darfur actually constitutes genocide as described in international law. To meet the legal definition of genocide under the Genocide Convention, a three-pronged test must be met. First is the *actus rea* of committing certain acts, including killing, causing serious bodily or mental harm, measures intended to prevent births, and the transfer of children. Second, these acts must be committed against a "national, ethnic, racial or religious group." Finally is the *mens rea* requirement that the acts be intended to destroy the said group "in whole or in part."[72]

Without getting into details, the U.S. State Department concluded that these three criteria were met in Darfur, with the *Janjaweed* militias and the Sudanese government committing one or more of the aforementioned actions against a protected group—in this case, the Fur, Massaleit, and Zaghawa tribes—and that these acts were intended to destroy in whole or in part these ethnic groups.[73] A subsequent UN inquiry (which resulted from the U.S. request that the UN Security Council authorize such an investigation) came to a different conclusion. The Report of the International Commission of Inquiry on Darfur concluded that the government of Sudan had *not* pursued a policy of genocide.[74] In addition to some uncertainty as to whether "tribal" groups constitute protected groups for the purposes of the Genocide Convention, the Commission ultimately concluded that there was a lack of genocidal intent—the *mens rea* element. Specifically, "the intent of the attackers was not to destroy an ethnic group as such, or part of the group. Instead, the intention was to murder all those men they considered as rebels, as well as forcibly expel the whole population so as to vacate the villages and prevent rebels from hiding among, or getting support from, the local population."[75] According to the UN Commission, then, the atrocities in Darfur are "only" mass murder and crimes against humanity, but not genocide.

That the UN came to a different conclusion than the United States regarding genocide in Darfur is relevant to the present concern for at least

[72] Genocide Convention, Article II.

[73] Hearing of the Senate Foreign Relations Committee, Testimony of Secretary of State Colin Powell; see also U.S. Department of State, *Documenting Atrocities in Darfur*, Bureau of Democracy, Human Rights, and Labor and the Bureau of Intelligence and Research, State Publication 11182, September 2004.

[74] Report of the International Commission of Inquiry on Darfur.

[75] Ibid., 131–132.

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two reasons. First, as a circumstantial matter, it is curious, to say the least, that the United States would find it expedient to label the Darfur atrocities "genocide," request a UN investigation only to have its claim challenged, and then continue to use the rhetoric of genocide despite the UN's contradictory findings.[76] While it is impossible to ascertain the extent to which State Department lawyers may have been aware of the uncertainty surrounding a legal determination of genocide, the fact that the UN Commission concluded that genocide had *not* taken place seemingly played into the hands of U.S. interests to the extent that the United States did not want to intervene. In other words, naming the crime plays into U.S. interests; that is, until doing so creates an expectation that it will intervene. So when the UN Commission concluded that genocide had *not* taken place, this assuaged expectations of a U.S. intervention, though the U.S.'s continued use of the rhetoric of genocide paints the picture that the United States is taking a firm stand against this "crime of crimes." The implication is that the United States was employing the rhetoric of genocide *as a substitute* for more-decisive action. After all, at least the Bush administration was "naming the crime," which is far more than could be said of the Clinton administration during the Rwandan genocide.

The second reason that the divergence in the conclusions of the United States and the UN is important has to do with the simple fact that Darfur is not Rwanda. While Darfur has been characterized as "Rwanda in slow motion,"[77] the atrocities in Darfur are qualitatively and quantitatively different from those in Rwanda 10 years earlier. Eight hundred thousand deaths in 100 days are scarcely comparable to an estimated 70,000 in 10 months.[78] Thus, when the United States continued to use the rhetoric of genocide despite the UN's contrary findings, the U.S. attempt to place Darfur in the same category as Rwanda led to charges by several leaders—mainly in the Islamic and Arab worlds—that the United States was employing the rhetoric of genocide as a pretext to invade another oil-rich and predominantly Arab and Muslim state.[79] While such accusations are clearly misguided, if one gives any merit to the reasoning outlined above, these and similar allegations are no small reason why the United States could safely engage in the rhetoric of genocide without much fear of the international public demanding it intervene to stop it.

[76] Jim VandeHei, "In Break with UN, Bush Calls Sudan Killings Genocide," *The Washington Post*, 2 June 2005.

[77] Anthony Lake and John Prendergast, "Stopping Sudan's Slow-Motion Genocide," *Boston Globe*, 20 May 2004.

[78] These figures on Rwanda are well-established. Figures on Darfur are from The World Health Organization between March and December of 2004, as cited by Colum Lynch, "Lack of Access Muddies Death Toll in Darfur," *The Washington Post*, 8 February 2005.

[79] "Sudan Prefers AU Mediation in Darfur Crisis, Says US Stance Isolated," *Global News Wire – Asia Africa Intelligence Wire*, 12 September 2004.

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Obstacles to action: Iraq, terrorism, and the Naivasha process. The response of the international community to the U.S.'s finding of genocide in Darfur was profound suspicion and was, at best, mixed. Not surprisingly, Sudan categorically rejected the U.S. finding, and was quick to suggest that the accusation of genocide could severely complicate not only peace negotiations with the Darfur rebels, but also the North–South peace process—the Naivasha Accords.[80] Likewise, the Arab League took the position that the situation in Darfur was neither genocide nor ethnic cleansing and accused the U.S. administration of "exploit[ing] the situation in Darfur for ... the US elections campaign [sic] to win black votes," a sentiment echoed by officials from the relief organization Médecins Sans Frontières.[81] AU officials—realizing that U.S. support was key to their efforts to demonstrate the organization's effectiveness in addressing crises in Africa—stopped short of condemning the U.S. finding, though it called on U.S. officials to provide evidence to support their claim.[82] Even before the U.S. administration made its position public, the European Union (EU) made a statement in response to Congress's genocide resolution, saying that the Darfur crisis did *not* meet the legal requirements of genocide.[83] Particularly after the UN Commission of Inquiry released its report on Darfur, the United States thus found itself isolated among its international peers on the issue of genocide. Such international hesitation to ostracize Sudan by accusing its government of genocide in Darfur should also come as no surprise, given the number of actors that have deep economic interests there, particularly China, whose veto has loomed large over any forceful UN Security Council action.[84]

Calls for decisive intervention by American evangelical and advocacy groups were received with equal skepticism in international circles, wherein the issue of U.S. involvement Iraq was difficult to ignore. A widely referenced article in the British newspaper *The Observer* accused the United States of "hyping" genocide in Darfur, despite findings to the contrary not only by the UN Commission of Inquiry, but also the AU, the EU, and importantly, the World Food Programme.[85] The framing of the crisis as "Arab on African" violence was, not surprisingly, opposed by prominent Arabs as yet another

[80] Gilbert DaCosta, "Sudan Says UN Genocide Declaration for Darfur Could Hurt Peace Talks," *Associated Press*, 10 September 2004.

[81] "Sudan News Agency on MSF's 'Categorical Rejection' of Powell's Darfur Remarks," *BBC Monitoring Middle East – Political*, 16 September 2004.

[82] "AU Official Asks USA to Provide Evidence of Genocide in Darfur," *Global News Wire – Asia Africa Intelligence Wire*, 13 September 2004.

[83] "US Senate Leader Insists 'Genocide' Underway in Darfur, Despite EU Statement," *Agence France Presse*, 10 August 2004.

[84] Peter S. Goodman, "China Invests Heavily in Sudan's Oil Industry," *The Washington Post*, 23 December 2004; Opheera McDoom, "China's Interests in Sudan Bring Diplomatic Cover," *Reuters*, 17 December 2005.

[85] Peter Beaumont, "US 'Hyping' Darfur Genocide Fear," *The Observer*, 3 October 2004.

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selective and unfair vilification of Arabs as *génocidaires*, particularly in a context in which the Western media routinely identify them as the instigators of terrorism.[86] Likewise, notable voices from the developing world—such as Indian-born senior vice-rector of the UN University in Tokyo, Ramesh Thakur—openly disparaged Western "humanitarians clamoring for another war," particularly in light of Iraq, arguing that any Western intervention in Darfur would "be exploited as yet another assault on Arabs and Muslims."[87] As Human Rights Watch's Michael Clough put it, "The fact that the US was waging a globally unpopular war in Iraq without a UN mandate inevitably affected how other UN member states responded [to the U.S.'s genocide finding], particularly once the graphic images of ... Abu Ghraib were broadcast around the world."[88]

The United States could scarcely afford the international political ramifications of military involvement in another predominantly Arab and Muslim (not to mention oil-rich) state at a time when the rest of the world was exceedingly suspicious of U.S. ambitions in the Middle East and of American interventionism in general. While the United States has indeed been part of military efforts genuinely intended to alleviate human suffering in other countries—such as in Kosovo in 1999—in the case of Iraq, "most actors in international and world society believed that humanitarian justifications were used to mask the exercise of hegemonic power."[89] If U.S. troops set foot in Darfur, the argument went, the United States would again be perceived as using humanitarianism as a pretext for otherwise neo-imperial ambitions, not to mention opening up a new front for jihadist attacks against U.S. and accompanying forces.[90] With the U.S. military already spread thin in Iraq and Afghanistan, at least some administration officials—probably more in the Pentagon—were no doubt relieved when the UN Commission announced that there was *not* genocide in Darfur. Ironically, it was the lack of U.S. credibility abroad and fear of exploitative U.S. motives that served to provide political cover for the Bush administration's non-intervention in the face of its own conclusion of genocide in Darfur.

In addition to concerns over the Iraq factor, one cannot ignore the connection of U.S. Sudan policy to the overall global war on terrorism. That is,

[86] De Waal, "Who Are the Darfurians," 200–201.

[87] Ramesh Thakur, "Western Medicine is No Cure for Darfur's Ills," *Financial Review*, 31 August 2004; see also "Sudan Can't Wait," *The Economist*, 31 July 2004, 11.

[88] Michael Clough, "Darfur: Whose Responsibility to Protect?" in *Human Rights Watch World Report, 2005* (New York: Human Rights Watch, 2005), 34.

[89] Williams and Bellamy, "Responsibility to Protect," 36–37; see also Hugo Slim, "Dithering over Darfur? A Preliminary Review of the International Response," *International Affairs* 80 (October 2004): 811–828.

[90] See John Laughland, "The Mask of Altruism Disguising a Colonial War," *The Guardian*, 2 August 2004; see also Susan E. Rice, "Why Darfur Can't be Left to Africa," *The Washington Post*, 7 August 2005.

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in the past few years, the Sudanese government has emerged as a very reliable partner and source of intelligence for the United States in the war on terrorism.[91] Given the high priority placed on terrorism in Washington, it is no surprise that a forceful response to "genocide" in Darfur would have to be weighed against the increasing need to befriend regimes like the one in Khartoum for purposes of anti-terrorism, despite its miserable human rights record. The United States scarcely allows human rights concerns to hazard its security and anti-terrorism ties with states like Pakistan and Egypt, so it would make sense that the United States would be extremely careful about potentially damaging a similarly beneficial relationship with Sudan.

The point remains that there was little desire for U.S.-led intervention in Darfur among international constituencies, though it was ultimately U.S. constituencies—namely, evangelical Christians—whose calls for intervention in Darfur would need to be assuaged. Recall that is was the evangelical lobby that was largely responsible for putting Sudan's North–South conflict high on the administration's agenda, which as I argued above, spilled over into a concern for Darfur. In fact, much later, it was revealed by the former U.S. representative to the UN, John Danforth, that the use of the term "genocide" to describe Darfur was intended for "internal consumption," mainly by the Christian right.[92] One must wonder, therefore, to what extent the United States would have reacted to Darfur at all had it not already been paying close attention to the events concerning Sudan's "other" civil war.

In any case, in November of 2004, about the time the administration was deflecting calls for more-decisive action in Darfur, it returned the focus of its Sudan policy from Darfur back to the stalled North–South peace negotiations—the Naivasha Accords.[93] Whether this shift in U.S. policy resulted from Khartoum's veiled threats that the U.S.'s rhetoric of genocide was endangering the Naivasha process is unknown. What *is* known is that the United States had invested considerable diplomatic capital in the Naivasha process and was eager to see it implemented, as were many in the faith-based Sudan coalition. Ending the North–South conflict was, after all, the original promise of President Bush to his evangelical base, so it made political sense to not let the Darfur crisis spoil the entire process, especially in an election year. The Bush administration thus returned to the tactic employed prior to the Darfur crisis of trying to use economic carrots to induce Khartoum to sign the Naivasha Accords.[94]

[91] Suzanne Goldenberg, "Ostracised Sudan Emerges as Key American Ally in 'War on Terror,'" *The Guardian Weekly*, 6 May 2005; see also Ken Silverstein, "Official Pariah Sudan Valuable to America's War on Terrorism," *Los Angeles Times*, 29 April 2005.

[92] "White House Described Darfur as 'Genocide' to Please Christian Right," *The Independent* (London), 2 July 2005, 26.

[93] "US Shift on Darfur Policy," *The Washington Post*, 27 December 2004; see also Clough, "Darfur: Whose Responsibility," 34–35.

[94] Williams and Bellamy, "Responsibility to Protect," 38.

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In doing so, the administration disabused observers of any notions that it would be willing to risk wrecking three years of intense diplomacy toward ending Africa's longest running civil war in favor of outright confrontation with Khartoum over Darfur. Referring to Darfur as genocide was one thing, inasmuch as it was for "internal consumption," to placate a restive evangelical Christian constituency; but at least President Bush would not go down in history as the president who refused to recognize genocide, unlike his predecessor. Going any further than this—say, pushing hard for economic sanctions in the Security Council or even intervening militarily—would have sacrificed the hard-won Naivasha process, which would have alienated American evangelicals even more than failing to intervene in Darfur. Thus, when important domestic constituencies put pressure on the administration over Darfur, the administration was effectively able to deflect such calls by raising the possibility that intervening or otherwise confronting Khartoum would jeopardize the very goal that these constituencies were fighting for in the first place: an end to the North–South conflict and the religious persecution that accompanied it.

Importantly, the U.S. administration found allies in the international community to support the position that the Darfur crisis was essentially secondary to securing a permanent peace deal between Khartoum and the SPLA/M. In a report by the UN Secretary-General's Special Representative for Internally Displaced Persons, Francis Deng explicitly linked the Darfur crisis to the North–South conflict. According to Deng's report, deploying protection forces to Darfur under Chapter VII of the UN Charter would provoke armed resistance by Khartoum, "turn Darfur into a threatre for another layer of conflict," and "fundamentally undermine the [Naivasha] peace process and lead it to collapse and plunge the whole country into an even greater crisis."[95] Thus, in a fortuitous convergence of interests, both U.S. and UN officials preferred an "African solution" to this problem that was to involve the AU.[96] Furthermore, several analysts argued that the best chance of securing a political solution to Darfur was through implementation of the Naivasha Accords, which involved a power-sharing deal that would allow the late SPLA/M leader, John Garang, to serve as Vice President in Khartoum to President Bashir. Once Garang was seated as the Vice President, it was argued, "Garang's desire to represent all of Sudan's non-Arab peoples, including Darfurians, would make it politically impossible for him to endorse a war there."[97] A confrontation with Khartoum that risked bringing about the downfall of President Bashir would also risk

[95] UN Economic and Social Council, Report of the Representative of the Secretary-General on Internally Displaced Persons: Mission to Sudan—the Darfur Crisis, UN Doc. E/CN.4/2005/8, 27 September 2004, ¶¶ 35, 36.

[96] Ibid., ¶ 37.

[97] Williams and Bellamy, "Responsibility to Protect," 39; see also Alex de Waal, "Darfur's Deep Grievances Defy All Hopes for an Easy Solution," *The Observer*, 25 July 2004; Ulrich Mans, "Sudan: The New War in Darfur," *African Affairs* 103 (April 2004): 291–294.

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the power-sharing arrangement that was thought to be the best chance of a peaceful settlement of the Darfur crisis.[98] This concern over the success of the Naivasha process in both domestic and international circles, in tandem with general international trepidation about American interventionism as a result of the Iraq war, thus contributed to a political atmosphere wherein U.S. officials could engage in the rhetoric of genocide without an expectation of intervention.

Concluding Remarks

The Bush administration's use of the rhetoric of genocide in reference to the crisis in Darfur stands as a radical departure from the reasoning that led the Clinton administration to avoid such language in reference to Rwanda. The reasons for this ultimately have to do with prevailing political realities, both domestic and international. Domestic constituencies' attention to events in Darfur cannot be understood without reference to Sudan's North–South conflict, which already had a formidable following in Washington. Nevertheless, when the already-significant attention given to this conflict shifted to Darfur at a time when the world was remembering the 10-year anniversary of the Clinton administration's failure to acknowledge reality in Rwanda, pressure was great to "do something," or at least "say something," about Darfur, which was more than Clinton officials had done about Rwanda. After all, in 1994, there was no Rwandan equivalent to the faith-based Sudan coalition in the United States, no Rwandan lobby in Washington, and no significant Rwandan expatriate community to put pressure on the Clinton administration. Thus, after some hesitation, Bush administration officials found it politically expedient to engage in the rhetoric of genocide to appease mainly evangelical constituencies, at least to the extent that such rhetoric would not create an expectation that the United States would participate in military intervention.

Whether U.S. officials were aware of it, hoping for it, or whether it was entirely accidental, prevailing political conditions in the summer and fall of 2004 were such that the expectation for intervention was mollified, despite a pronouncement of genocide. In the legal community, it had become clear that a finding of genocide did not trigger a legal obligation to physically intervene in Darfur, whereas the same cannot necessarily be said of the Rwandan crisis of 1994, at least, evidently, as far as some State Department lawyers were concerned. Likewise, even though some evangelical and human rights advocacy groups were calling for intervention on ethical grounds, the deployment of U.S. military assets to another far-away conflict would have been a tough sell to the American public at a time when the United States was fighting expensive counter-insurgencies in Afghanistan and Iraq. And, of course, even calls for decisive action by the main advocates of the Darfur cause—the evangelical and

[98] Slim, "Dithering over Darfur," 822.

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African American lobbies—were muted once it was realized that a confrontation with Khartoum would jeopardize efforts to end the "other" civil war that had brought about religious persecution of Christians and a revival of the slave trade. Thus, the Bush administration was able to mitigate calls for intervention despite its acknowledgement of genocide by essentially framing other interests as more important—namely, the Naivasha process. According to this logic, then, the Clinton administration in 1994 should have been able to assuage calls for intervention in Rwanda—even if it had admitted that genocide was transpiring—by reminding the American public of what had happened in Somalia. Again, differing political circumstances precluded this being the case.

First, in the spring of 1994, the U.S. military was not committed to the extent that it was in the summer and fall of 2004. As such, the argument that U.S. forces were spread too thin was not as plausible for Clinton to make as a reason not to intervene to avert genocide. The argument that the crisis required an "African solution" was likewise not as available to Clinton officials during Rwanda. The Bush administration, by contrast, could more plausibly pass any peacekeeping or other military burden to the AU, which was founded in 2002 and whose charter specifically authorizes it to intervene to prevent humanitarian crises.[99] And while the United States was itself among those likely—if not *the* most likely—to veto Security Council action over Rwanda, the virtual certainty of a Chinese veto of action in Darfur has given the United States ample political cover to refrain from forcefully pursuing decisive Security Council action over Darfur. In addition, one cannot ignore the empirical differences between Rwanda and Darfur in terms of the sheer scale and speed at which the killings took place. The fact that Darfur was "Rwanda in slow motion" suggests that there would have been more of an imperative to quickly intervene in Rwanda and less time for deliberation, whereas the slower and more drawn-out suffering and dying of Darfurians would not seemingly necessitate the same sense of urgency, particularly when most deaths were due to starvation and disease as opposed to a machete blade.

Other aspects of international politics played equally important roles. As argued above, U.S. involvement in places like Afghanistan and Iraq led to significant skepticism and mistrust by the international community concerning the motives and desirability of American military interventionism. Thus, calls for U.S. military intervention in Darfur, not surprisingly, were not well received in many other countries. This international sentiment is very much in contrast to that which prevailed during the Rwanda crisis. While certainly not uncontroversial, during the 1990s, the idea of humanitarian intervention gained some acceptance as a legitimate use of military force.[100] Even the 1999 U.S.-led NATO intervention over Kosovo—which was not authorized by the

[99] Constitutive Act of the African Union, 26 May 2001, OAU Doc. CAB/LEG/23.15, Article 4(h).

[100] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), 7.

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Security Council and was thus technically illegal—was widely viewed as a legitimate use of military force.[101] Had Clinton come forth with an admission of genocide in Rwanda, officials reasoned that the international public would have demanded that the United States take the lead in stopping it, as it did to stop human suffering in northern Iraq, Somalia, and Bosnia, and as it was considering doing in Haiti. The Clinton administration was arguably more responsive to the views of the international public than the Bush administration, and thus would have taken international calls for action more seriously and would have been more moved by charges of selective indignation. While the degree of legitimacy possessed by the United States as a global enforcer of human rights during the 1990s would have facilitated international demands for it to intervene in Rwanda, it was, *inter alia*, the precise *lack* of such legitimacy that contributed to the absence of such pressure regarding Darfur.

It is a matter of legal hairsplitting that separates genocide from "mere" mass murder or "simple" crimes against humanity. But the word "genocide" undoubtedly has entailments that these other atrocities do not: it is more inflammatory, more reproachful, and entails at least a moral (if not legal) obligation to stop such acts. This is why Clinton administration officials danced around the word in 1994, and it is why the Bush administration's characterization of the Darfur crisis as genocide created a groundswell of controversy in world capitals in 2004. The implications of its use, however, are undoubtedly affected by the prevailing political milieu as well as the perceived political interests of states and their leaders. For the Clinton administration during the Rwanda crisis, the power of the rhetoric of genocide was that it would have obligated it to "do something." Whereas for the Bush administration during the Darfur crisis, its emotive and condemnatory attachments led to its use *as a substitute* for more-decisive action. It may indeed be a truism to say that the United States and those elites who represent it will only use the rhetoric of genocide if they stand to gain something by doing so. But instead of simply relegating such an insight to the grand tautology that "states behave in accordance with their national interests," we can try to understand—although always incompletely—the precise conditions that led the state to behave in the way it did or to use the rhetoric it did (or did not), particularly when such (lack of) action or rhetoric contributes to the suffering and death of so many innocent people. Examined in this light, the rhetoric of genocide in U.S. foreign policy, while not being excused, must at least be explained and better understood if we are to come to grips with its consequences.*

[101] Independent International Commission on Kosovo, *The Kosovo Report* (Oxford, UK: Oxford University Press, 2000), 4.

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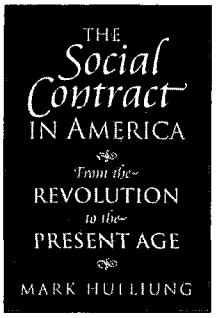

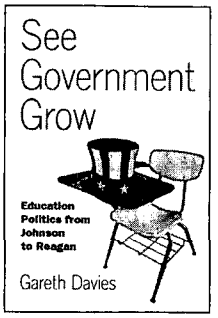

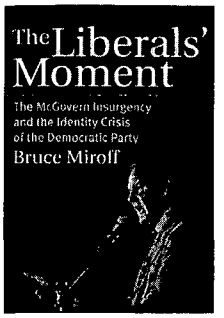

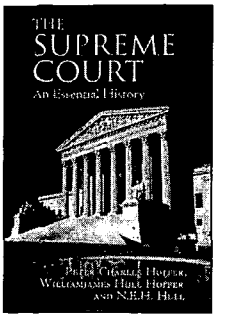

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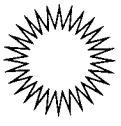

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The State Secrets Privilege: Relying on *Reynolds*

LOUIS FISHER

In response to newspaper disclosures in December 2005 about secret eavesdropping by the National Security Agency (NSA),[1] a number of lawsuits challenged the constitutionality and legality of the program. The George W. Bush administration invoked the state secrets privilege as an absolute bar to litigation whenever the administration determines that the disclosure of agency documents would harm national security. In relying on the privilege in one NSA case, the Justice Department argued that its assertion "assuredly [is] not any indication that the allegations the plaintiffs are making are necessarily true. Nor is it an indication that the allegations are necessarily false. They're instead a function of the subject matter of those allegations. The reality is that given the nature of those allegations, it would expose state secrets for them to be either confirmed or denied."[2] Whether such phone companies as AT&T are cooperating with the government in intelligence gathering "is absolutely a secret; it's a secret of the highest order."[3]

On 12 May 2006, a federal district court ruled that Khaled El-Masri could not bring suit against the government on the grounds that he was illegally detained as part of the CIA's "extraordinary rendition" program, tortured, and subjected to other inhumane treatment. The court held that the state secrets privilege had been validly asserted.[4] In a similar case, Maher Arar sued the government for having him removed to Syria for the express purpose of deten-

[1] James Risen and Eric Lichblau, "Bush Lets U.S. Spy on Callers Without Courts," *The New York Times*, 16 December 2005.

[2] *Hepting v. AT&T Corp.*, U.S. District Court, Northern District of California, Transcript of Proceedings, 23 June 2006, 21.

[3] Ibid., 23.

[4] *El-Masri v. Tenet*, 437 F.Supp.2d 530 (E.D. Va. 2006).

LOUIS FISHER is a specialist in Constitutional Law at the Law Library of the Library of Congress, where he focuses on national security law and presidential power. The views expressed here are personal, not institutional.

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tion and interrogation under torture by Syrian officials. His case was dismissed in part on state secrets grounds.[5]

In these and other cases, the Justice Department relies primarily on *United States v. Reynolds* (1953), the first time that the Supreme Court recognized the state secrets privilege. For a federal court to automatically accept claims of state secrets by an interested party (the government)—and treat them as absolute—would do great damage to the reputation and integrity of the federal judiciary. It would repudiate any pretense of judicial independence, objectivity, the weighing of evidence, or fairness to a private litigant. This is especially true in the face of the repeated use of the privilege by the executive branch over the past several decades.[6]

In his authoritative treatise on evidence, John Henry Wigmore recognized that the state secrets privilege exists, but he concluded that the branch responsible for determining the necessity of the privilege is the judiciary, not the executive: "Shall every subordinate in the department have access to the secret, and not the presiding officer of justice?"[7] A court that "abdicates its inherent function of determining the facts upon which the admissibility of evidence depends will furnish to bureaucratic officials too ample opportunities for abusing the privilege."[8]

Reynolds in District Court

In *United States v. Reynolds* (1953), the Supreme Court for the first time recognized and upheld the state secrets privilege. Although the decision remains the principal citation for the privilege, the circumstances of the case provide powerful evidence that it was poorly and unwisely decided and should not be relied on to sustain independent and unchecked executive power. Many legal precedents exist, including *Dred Scott* and the Japanese-American cases of World War II. Not all provide sound and compelling guidance for contemporary times.[9]

In *Reynolds*, three widows brought an action under the Federal Tort Claims Act to sue the government for negligence in the midair explosion of a B-29 bomber on 6 October 1948, over Waycross, Georgia. Five of eight crew

[5] *Arar v. Ashcroft*, 414 F.Supp.2d 250 (E.D. N.Y. 2006).

[6] William G. Weaver and Robert M. Pallitto, "State Secrets and Executive Power," *Political Science Quarterly* 120 (Spring 2005): 85–112.

[7] John Henry Wigmore, *Evidence in Trials at Common Law*, vol. 8, 3rd ed. (Boston: Little, Brown, 1940), § 2379.

[8] Ibid.

[9] See Louis Fisher and David Gray Adler, *American Constitutional Law*, 7th ed. (Durham, NC: Carolina Academic Press, 2007), 263, 269–272, 761–766. In *Dred Scott v. Sandford* (1857), the Supreme Court held that Scott could not sue in federal court and that he (and all other black slaves and their descendants) was not a citizen of the United States or Missouri. In the two Japanese-American cases, *Hirabayashi v. United States* (1943), and *Korematsu v. United States* (1944), the Court upheld a curfew order and detention camps for Japanese-Americans, two-thirds of whom were U.S. citizens.

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members perished, as did four of the five civilian engineers on board, who had served as technical advisers to an Air Force project. They provided assistance with the secret equipment tested on the flight, all of which was known to newspaper readers who learned of the crash the next day.[10] The widows requested several key documents, including the accident report and the depositions of three surviving crew survivors.

The Federal Tort Claims Act of 1946 authorizes federal agencies to settle any claim against the United States "caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment."[11] Congress directed federal courts to treat the government in the same manner as a private individual, deciding the dispute on the basis of facts and with no partiality in favor of the government. The United States "shall be liable in respect of such claims...in the same manner, and to the same extent as a private individual under like circumstances, except that the United States shall not be liable for interest prior to judgment, or for punitive damages."[12]

Other than the exceptions listed in the statute, Congress authorized courts to adjudicate claims against the government and decide them fairly in light of available facts. Congress empowered the courts to exercise independent judgment. There was no reason for judges to accept at face value a government's claim that an agency document requested by plaintiffs was somehow privileged, without the court itself examining the document to verify the government's assertion. To uncritically accept the government's word would be to abdicate the court's duty to protect the ability of each party to present its case fairly in court. It would leave control entirely in the hands of self-interested executive claims.

The three widows filed their lawsuit on 21 June 1949. The case was assigned to Judge William H. Kirkpatrick, chief judge of the Eastern District in Pennsylvania. Representing the women were Charles J. Biddle and Francis Hopkinson of Drinker Biddle & Reath, a prominent law firm in Philadelphia. Biddle submitted 31 questions to the government, requesting that it provide answers and submit copies of identified records and documents. The government responded to the interrogatories on 5 January 1950.[13] The first question asked whether the government had directed an investigation into the crash. If so, the government was to attach to its answer a copy of the reports and findings of the investigation.[14] The government acknowledged that there had been an investigation

[10] Louis Fisher, *In the Name of National Security: Unchecked Presidential Power and the* Reynolds *Case* (Lawrence: University Press of Kansas (2006)), 1–2.

[11] 60 Stat. 843, § 403 (1) (1946).

[12] Ibid., 843–844, § 410(a).

[13] Fisher, *In the Name of National Security*, 31–35.

[14] Transcript of Record, Supreme Court of the United States, October Term, 1952, No. 21, *United States v. Reynolds* (hereafter "Transcript of Record"), 8.

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but refused to produce the accident report.[15] No claim of state secrets was advanced at this stage.

Question 7 in the interrogatories: "Was any engine trouble experienced with the said B-29 type aircraft on October 6, 1947, prior to the crash?"[16] The government's unhelpful reply: "Yes, almost immediately before the crash." The last two questions sought information about possible mechanical or engineering defects on the B-29 for three months immediately preceding the crash. Was it necessary at any time to postpone a scheduled flight of the plane because of those defects? The government answered in the negative.[17] The last question asked whether the government had prescribed modifications to the B-29 engines to prevent overheating and to reduce fire hazards. If so, when were the modifications prescribed? If any modifications had been carried out, the interrogatory asked for details. The government's answer to this crucial question was a blunt and abrupt no.[18] When the declassified accident report was discovered on the Internet in 2000, the falsity of that answer became apparent.

In response to the widows' request for the accident report and the statements of the three surviving crew members, the government on 25 January offered five reasons for withholding the documents. The first: "Report and findings of official investigation of air crash near Waycross, Georgia, are privileged documents, part of the executive files and declared confidential, pursuant to regulation promulgated under authority of Revised Statute 161 (5 U.S. Code 22)."[19] The citation was to the Housekeeping Statute, which dates back to 1789 and merely directed agency heads to keep custody of official documents. It did not in any way authorize the withholding of documents from plaintiffs or the courts.[20] The other four reasons offered for withholding the documents relied on hearsay rules.[21]

Prior to the district court's decision, several district and appellate courts had issued important rulings on access to government documents considered too sensitive, privileged, or secret to be shared with a private plaintiff. Judges concluded that the documents should be given to the court to independently determine and verify whether the government had accurately characterized the contents.[22] A district court decision in 1944, *United States v. Haugen*, involved a national security dispute. The issue was whether a private company was a government contractor in the secret defense project at Hanford, Washington, a project designed to create fission of uranium derivatives and the construction of an atomic bomb. To show that the company was indeed a federal agency, the government needed to produce the contract, but the original was with the

[15] Ibid., 12.
[16] Ibid., 9.
[17] Ibid., 14.
[18] Ibid.
[19] Fisher, *In the Name of National Security*, 36.
[20] Ibid., 36, 44–48.
[21] Ibid., 36.
[22] Ibid., 37–42.

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General Accounting Office in Washington DC. As a substitute, the government tried to rely on oral testimony from a major, and the district judge initially found that acceptable: "The right of the Army to refuse to disclose confidential information, the secrecy of which it deems necessary to national defense, is indisputable."[23]

Can the government prosecute someone on the basis of a document it refuses to release? The court proceeded to ask whether "secondary evidence" (not the contract but the oral testimony of the major) was admissible in a courtroom.[24] It found it unsatisfactory to rely on "a copy of the copy."[25] Because the government had "failed to present the best evidence available to it," the judge concluded that he should have sustained the initial objection to the major's testimony. Without such evidence, the government had failed to sustain its claim that the company was an agency of the United States.[26] The court therefore dismissed the government's prosecution. In short, the government could withhold a requested document, but exercising that privilege could come at a price: keep the document and lose the case.

In its appeal to the Ninth Circuit, the government decided to share the disputed document with the trial court. After the district judge dismissed the indictment, the government moved to reopen the case and submit the evidence to the court.[27] The trial then proceeded. The government handed the contract to the court "for its consideration."[28] Having examined the contract, and concluding that the company was an agency of the United States, the Ninth Circuit affirmed the conviction.[29]

Struggles over access to government documents appear in several cases decided in the years leading up to district court action in *Reynolds*. In *Bank Line Limited* (1946), the plaintiffs requested a copy of the record prepared by the U.S. Naval Board of Investigation regarding collisions between inbound and outbound vessels of a convoy. The government withheld the record by making a claim of privilege and arguing that disclosure would seriously hamper the administration of the Navy Department. A district court ruled that the plaintiff was entitled to the record. No reasons of national security had been presented to justify the claim of privilege.[30] In the government's appeal to the Second Circuit, letters were received from the Judge Advocate of the Navy and the Acting Secretary of the Navy, both urging the appellate court to refuse access to the Navy Board's record because it would interfere with the Navy's investigatory and fact-finding procedure and would be prejudicial to the de-

[23] *United States v. Haugen*, 58 F.Supp. 436, 438 (E.D. Wash. 1944).
[24] Ibid., 439.
[25] Ibid., 440.
[26] Ibid.
[27] *Haugen v. United States*, 153 F.2d 850, 851 (9th Cir. 1946).
[28] Ibid., 852.
[29] Ibid., 853.
[30] *Bank Line Limited v. United States*, 68 F.Supp. 587, 588 (D. N.Y. 1946).

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partment's best interests.[31] After the Second Circuit rejected the government's petition to deny production of the record, the district court in 1948 allowed access to the documents by the plaintiffs.[32] In referring to the sovereign's command *Soit droit fait al partie* (Let right be done to the party), it added this observation: "But right cannot be done if the government is allowed to suppress the facts in its possession."[33]

Wunderly v. United States (1948) involved a collision between the plaintiff's automobile and an Army jeep. The government furnished the plaintiff with copies of statements made by the driver and his immediate superior but refused to furnish a copy of the statement of a major. A district court pointed out that the Federal Tort Claims Act places the United States, with respect to claims dealt with by the act, on a par with private litigants.[34] It overruled the government's position that the major's statement was privileged. No contention had been made "that any military secrets, possibly protected by the scope of common law privilege, are involved."[35] It relied in part on *O'Neill v. United States*, a district court decision that had been handed down a few months earlier, on 23 August 1948. The author of that decision was Judge Kirkpatrick. The case involved a tort action under the Admiralty Act brought by a seaman for personal injuries after damage to a tanker. Like the Federal Tort Claims Act, the Suits in Admiralty Act put the government in all respects on a par with private individuals in litigation. Judge Kirkpatrick held that the seaman was entitled to receive written statements, taken by the Federal Bureau of Investigation (FBI), made by witnesses who had personal knowledge of the damage done to the tanker.[36]

At the appellate level, with the case now called *Alltmont*, the Third Circuit vacated Kirkpatrick's order on 3 June 1949 because of confusion about which documents the government would be compelled to hand over.[37] Kirkpatrick issued a new decree on 28 June to clarify what he meant by witnesses to the accident.[38] The Third Circuit was now in a position, on 23 November, to rule on whether there had been a prior showing of good cause (required by Admiralty Rule 32) to obtain the FBI statements. The Third Circuit reversed Kirkpatrick, requiring him to determine whether the plaintiffs had shown good cause. Access to the statements might be unnecessary because the plaintiffs had the names and addresses of the persons who made statements to the FBI and could therefore interview them directly.[39]

[31] *Bank Line v. United States*, 163 F.2d 133, 135–136 (2d Cir. 1947).
[32] *Bank Line v. United States*, 76 F.Supp. 801 (D. N.Y. 1948).
[33] Ibid., 804.
[34] *Wunderly v. United States*, 8 F.R.D. 356, 357 (D. Pa. 1948).
[35] Ibid.
[36] *O'Neill v. United States*, 79 F.Supp. 827 (D. Pa. 1948).
[37] *Alltmont v. United States*, 174 F.2d 931 (3d Cir. 1949).
[38] *Alltmont v. United States*, 87 F.Supp. 214 (D. Pa. 1949).
[39] *Alltmont v. United States*, 177 F.2d 971, 978–979 (3d Cir. 1949).

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In *Cresmer v. United States* (1949), the plaintiff directed the government to produce for inspection and copying the record or report of the investigation conducted by the Navy Board of Investigation of an air crash in Bayside, Long Island, resulting in the death of a private citizen.[40] The plaintiff claimed that government negligence contributed to the accident. The government argued that the person operating the plane, although an employee of the government, was acting unlawfully and not within the scope of his office and employment. The government also opposed the motion for production of documents on the grounds that the report was privileged.[41]

To make sure that the report did not contain military secrets that would be detrimental to the interest of U.S. armed forces or national security if disclosed, the district judge directed the government to produce the report for his examination. He received the report, read it, and saw "nothing in it which would in any way reveal a military secret or subject the United States and its armed forces to any peril by reason of complete revelation."[42] In the absence of a showing of a war secret or a threat to national security, the judge ruled that "it would appear to be unseemly for the Government to thwart the efforts of a plaintiff in a case such as this to learn as much as possible concerning the cause of the disaster."[43] The court granted the plaintiff's motion for production of the report.

Two other important decisions were handed down by federal courts before Judge Kirkpatrick issued his ruling in the B-29 case. In *Cotton Valley* (1949), a district court warned the United States of what would happen if it failed to comply with a court order to produce documents requested by a private party. The government could first submit the documents to the court for independent scrutiny to test the government's claim of privilege. Failure to follow that procedure would mean that the court would dismiss the government's effort to file an antitrust action against the company.[44] The Supreme Court affirmed that judgment on 24 April 1950.[45] Through this process, the government learned that its refusal to release requested documents could come at a cost: dismissal of a case.

The other lawsuit was *Evans v. United States*, decided by a district court on 12 May 1950. A private party brought a tort claims action against the government for an alleged negligent death caused by the crash of an Air Force plane. The government refused to permit the private parties to see public documents, including the official investigative report of the accident.[46] The government also withheld the names of any witnesses and their statements. The case was on

[40] *Cresmer v. United States*, 9 F.R.D. 203 (D. N.Y. 1949).
[41] Ibid., 204.
[42] Ibid.
[43] Ibid.
[44] *United States v. Cotton Valley Operators Committee*, 9 F.R.D. 719 (D. La. 1949).
[45] *United States v. Cotton Valley Operators Committee*, 339 U.S. 940 (1950).
[46] *Evans v. United States,* 10 F.R.D. 255, 257 (D. La. 1950).

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all fours with the B-29 litigation. The court underscored its duty under the Federal Tort Claims Act to adjudicate disputes in an independent manner and to ensure that plaintiffs have adequate access to documents to prepare their case: "It is not the exclusive right of any such agency of the Government to decide for itself the privileged nature of any such documents, but the Court is the one to judge of this when contention is made. This can be done by presenting to the Judge, without disclosure in the first instance to the other side, whatever is claimed to have that status. The Court then decides whether it is privileged or not. This would seem to be the inevitable consequence of the Government submitting itself either as plaintiff or defendant to litigation with private persons."[47] In view of the allegations of the *Evans* complaint and the motion to produce information, documents, and witnesses with respect to what caused the accident, the court ruled that the plaintiffs had shown good cause to have the requested materials submitted to them by the government.[48]

Guided by these lower court precedents, Judge Kirkpatrick decided on 30 June 1950 that the report of the B-29 accident and the findings of the Air Force's investigation "are not privileged."[49] The interrogatories had flushed out some basic facts, but the government's answers "are far short of the full and complete disclosure of facts which the spirit of the rules requires."[50] He noted that in response to the question, "Describe in detail the trouble experienced," the government answered: "At between 18,500 or 19,000 feet manifold pressure dropped to 23 inches on No. one engine."[51] To Kirkpatrick, it was "obvious" that the government, in possession of the report and findings of its official investigation, "knows more about the accident than this."[52] The widows, he said, were entitled to have the documents produced.

On 20 July, Judge Kirkpatrick issued an order permitting the plaintiffs to inspect the requested documents and set a deadline of 7 August for the government to produce the documents.[53] On 24 July, the Justice Department presented to Judge Kirkpatrick a number of letters, affidavits, and statements explaining why the documents should not be released to the plaintiffs.[54] On 9 August, Kirkpatrick met in court to hear from Francis Hopkinson for the plaintiffs, two attorneys from the Justice Department, and two colonels from the Judge Advocate General's Office of the Air Force. Thomas J. Curtin, Assistant U.S. Attorney, brought with him an affidavit signed by Maj. Gen. Reginald C. Harmon, Judge Advocate General of the U.S. Air Force, who stated that information and findings of the accident report and survivor state-

[47] Ibid., 257–258.
[48] Ibid., 258.
[49] *Brauner v. United States*, 10 F.R.D. 468, 472 (D. Pa. 1950).
[50] Ibid., 471.
[51] Ibid.
[52] Ibid.
[53] Fisher, *In the Name of National Security*, 51.
[54] Ibid., 51–56.

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ments "cannot be furnished without seriously hampering national security, flying safety and the development of highly technical and secret military equipment."[55]

At the 9 August hearing, Curtin also brought with him an undated claim of privilege by the Secretary of the Air Force, Thomas K. Finletter. This turned out to be the pivotal document, spawning great confusion in the case decided by the Supreme Court in 1953 and subsequent litigation in the 2003–06 period when the three families went back to court to charge that the government had deceived the judiciary. Finletter said that the B-29 carried "confidential equipment on board and any disclosure of its mission or information concerning its operation or performance would be prejudicial to this Department and would not be in the public interest."[56] Those basic facts were known to newspaper readers the day after the crash. Why did Finletter warn about disclosing the plane's mission or information concerning its operation or performance? Was that type of information in the accident report or the survivor statements sought by the widows? It would be discovered, a half century later, that those documents disclosed nothing about the plane's secret mission or the confidential equipment. Intentionally or not, the Finletter statement was a red herring.

Finletter regarded the compulsory production of the investigative report as "prejudicial to the efficient operation of the Department of the Air Force, ... not in the public interest, and ... inconsistent with national security." He asserted the privileged status of the requested reports "and ... respectfully decline[d] to permit their production."[57] Finletter was not relying primarily on common law or the state secrets privilege. He relied on statutory authority given by Congress in the Housekeeping Statute. Nothing in that statute implied any authority on the part of federal agencies to withhold documents sought in litigation.[58] The last line of Finletter's statement might imply the state secrets privilege, in the sense of claiming that no matter what a federal judge ordered, the executive branch could refuse. As the government learned in district court and the Third Circuit, refusal could mean losing the case.

Judge Kirkpatrick announced at the 9 August hearing his impression that the government was not contending that the case involved "the well recognized common law privilege in regard to secrets or facts which might seriously harm

[55] Affidavit of the Judge Advocate General, United States Air Force, *Reynolds v. United States*, Civil Action No. 10142, U.S. District Court for the Eastern District of Pennsylvania, 7 August 1950, signed by Major General Reginald C. Harmon (hereafter "Harmon affidavit"). The affidavit was not filed with the court until 10 October 1950. However, Thomas J. Curtin of the Justice Department brought this affidavit with him to the August 9 hearing; Transcript of Proceedings, 9 August 1950, *Brauner and Palya v. United States*, Civil Action No. 9793, and *Reynolds v. United States*, Civil Action No. 10142 (E.D. Pa. 1950), 4 (hereafter "Proceedings for 9 August 1950").

[56] Claim of Privilege by the Secretary of the Air Force, *Reynolds v. United States*, Civil Action No. 10142 (E.D. Pa. 1950), 2, filed with the court on 10 October 1950 (hereafter "Finletter statement"). The five-page Finletter statement is not paginated. Although not filed until October 10, Curtin brought it with him to the August 9 hearing.

[57] Finletter statement, 5.

[58] Fisher, *In the Name of National Security*, 44–48.

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the Government in its diplomatic relations, military operations or the national security." Curtin of the Justice Department requested that Kirkpatrick "pass that for a minute, because that does come into this case in the second document" (the Finletter statement).[59] Curtin insisted that "the findings of the head of the Department are binding, and the judiciary cannot waive it."[60] When it came to statutory interpretation of agency authority over access to documents, "we contend [the department's judgment] is final."[61]

Kirkpatrick pursued that point. Putting statutory questions aside, he wanted to know if the government claimed a common law privilege over military secrets, would the government's decision be final and unreviewable by a court? Curtin: "There is no other interpretation. In other words, I say that the Executive is the person who must make that determination, not the Judiciary."[62] The state secrets privilege had made its appearance, even if the Justice Department would never expressly claim that privilege in its briefs submitted to the district court.

On 21 September, Judge Kirkpatrick issued an amended order directing the government to produce for his examination several documents "so that this court may determine whether or not all or any parts of such documents contain matters of a confidential nature, discovery of which would violate the Government's privilege against disclosure of matters involving the national or public interest." The documents included the accident report and statements of the three surviving crew members.[63] When the government failed to produce the documents for his inspection, he ruled in favor of the three widows.[64] As earlier cases had signaled, the government's refusal to produce requested documents—either to plaintiffs or to a trial court—always ran a risk. The court could simply decide in favor of the plaintiff.

The Third Circuit Affirms

The government gave notice on 20 April 1951 that it would appeal Judge Kirkpatrick's decision.[65] To the government, the ultimate issue was whether the Housekeeping Statute "and the Constitutional doctrine of separation of powers creates in the head of an executive department a discretion, to be exercised by him, to determine whether the public interest permits disclosure of

[59] *Brauner v. United States*, Civil Action No. 9793 U.S. District Court for the Eastern District of Pennsylvania, Transcript of Proceedings, 9 August 1950, 6.

[60] Ibid., 9.

[61] Ibid., 10.

[62] Ibid.

[63] Amended Order, 21 September 1950, *Brauner and Payla v. United States*, Civil Action No. 9793, and *Reynolds v. United States*, Civil Action No. 10142 (E.D. Pa. 1950), 2.

[64] Fisher, *In the Name of National Security*, 56–57.

[65] Notice of Appeal to the United States Court of Appeals for the Third Circuit, *Brauner and Palya v. United States*, Civil Action No. 9793, and *Reynolds v. United States*, Civil Action No. 10142 (E.D. Pa. 1951).

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official records."[66] No one argued that state secrets should be "disclosed" to the public. Delivering the documents to a district judge, to be read in chambers, could not be considered as disclosure. The government essentially argued that access to evidence in a trial would be decided not by the judiciary but by one of the parties to the case: the executive branch.

The government looked to British precedents for guidance: "We believe that all controlling governmental and judicial material, here and in England, clearly supports the view that, in this type of case at least, disclosure by the head of an executive department cannot be coerced."[67] Why this emphasis on "disclosure" when the procedure contemplated was always in camera inspection by a judge? Also, the analogy to Great Britain was misplaced because the U.S. Constitution recognizes values and principles that broke decisively with British history and practice, including an independent judiciary capable of deciding against the executive branch, even in cases of national security. The American Framers considered the British legal model, which placed all of external affairs, foreign policy, and the war power in the executive, and firmly rejected it.[68]

On 11 December 1951, the Third Circuit upheld the district court's decision: "Considerations of justice may well demand that the plaintiffs should have access to the facts, thus within the exclusive control of their opponent, upon which they were required to rely to establish their right of recovery."[69] In tort claims cases, where the government had consented to be sued as a private person, whatever claims of public interest might exist in withholding accident reports "must yield to what Congress evidently regarded as the greater public interest involved in seeing that justice is done to persons injured by governmental operations whom it has authorized to enforce their claims by suit against the United States."[70]

In addition to matters of public law, the Third Circuit viewed the case from the standpoint of policy. To grant the government the "sweeping privilege" it claimed would be "contrary to a sound public policy."[71] It would be a small step, the court said, toward "assert[ing] a privilege against any disclosure of records merely because they might prove embarrassing to government officers."[72] The court rejected the government's position that it was within "the sole province of the Secretary of the Air Force to determine whether any privileged material is contained in the documents and ... his determination of this question must be accepted by the district court without any independent consideration

[66] Brief for the United States, *Reynolds v. United States*, No. 10483 (3d Cir. 1951), 1 (hereafter "Government's Brief"), 6.

[67] Ibid.

[68] Louis Fisher, *Presidential War Power*, 2nd ed. (Lawrence: University Press of Kansas, 2004), 1–16.

[69] *Reynolds v. United States*, 192 F.2d 987, 992 (3d Cir. 1951).

[70] Ibid., 994.

[71] Ibid., 995.

[72] Ibid.

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of the matter by it. We cannot accede to this proposition."[73] To hold that an agency head in a suit to which the government is a party "may conclusively determine the Government's claim of privilege is to abdicate the judicial function and permit the executive branch of the Government to infringe the independent province of the judiciary as laid down by the Constitution."[74]

Final Step: The Supreme Court

Having lost in district court and the Third Circuit, the government petitioned the Supreme Court for a writ of certiorari. After looking to history, practices in the states, and British rulings, the government for the first time began to press the state secrets privilege: "There are well settled privileges for state secrets and for communications of informers, both of which are applicable here, the first because the airplane which crashed was alleged by the Secretary [of the Air Force] to be carrying secret equipment, and the second because the secrecy necessary to encourage full disclosure by informants is also necessary in order to encourage the freest possible discussion by survivors before Accident Investigation Boards."[75]

The fact that the plane was carrying secret equipment was known to newspaper readers the day after the crash.[76] The fundamental issue, which the government repeatedly muddled, was whether the accident report and the survivor statements contained secret information. As it turns out, they did not.[77] In its brief, the government invoked "the so-called 'state secrets' privilege," claiming that the claim of privilege by Secretary of the Air Force Finletter "falls squarely" under that privilege for various reasons. Nothing in the government's argument had anything to do with the *contents* of the accident report or the survivors' statements. Had those documents been made available to the district court, it would have seen nothing that related to military secrets or confidential equipment. At various places, the government's brief misled the Supreme Court on the contents of the accident report. It asserted: "To the extent that the report reveals military secrets concerning the structure or performance of the plane that crashed or deals with these factors in relation to projected or suggested secret improvements it falls within the judicially recognized 'state secrets' privilege."[78] "To the extent"? In the case of the accident report and the survivor statements, the extent was zero.[79]

[73] Ibid., 996–997.

[74] Ibid., 997.

[75] Brief for the United States, *United States v. Reynolds*, No. 21, U.S. Supreme Court, October Term, 1952, 11.

[76] Fisher, *In The Name of National Security*, 1–2.

[77] Ibid., 166–169.

[78] Brief for the United States, *United States v. Reynolds*, No. 21, U.S. Supreme Court, October Term, 1942, 45.

[79] For access to accident report, see pages 10a-68a of http://www.fas.org/sgp/othergov/reynoldspetapp.pdf, accessed 24 June 2007.

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On 9 March 1953, the Supreme Court ruled that the government had presented a valid claim of privilege. It did so without looking at the documents. Divided 6 to 3, the Court described a confused level of judicial supervision: "The court itself must determine whether the circumstances are appropriate for the claim of privilege, and yet do so without forcing a disclosure of the very thing the privilege is designed to protect."[80] If the government can keep the actual documents from the judge, even for in camera inspection, there is no basis on which a judge can "determine whether the circumstances are appropriate for the claim of privilege." The court merely accepts at face value an assertion by the government, an assertion that, in this case, proved to be false. Nor is there any reason to regard in camera inspection as "disclosure." The Court reasoned that in the case of the privilege against disclosing documents, the court "must be satisfied from all the evidence and circumstances" before it decides to accept the claim of privilege.[81] Denied actual documents, the judge has no "evidence" other than claims and assertions by self-serving statements from executive officials.

Finally, the Court cautioned that judicial control "over the evidence of a case cannot be abdicated to the caprice of executive officers."[82] If an executive officer acted capriciously and arbitrarily, a court would have no way of discerning that behavior unless it personally examined in camera the disputed documents. Without access to evidence, federal courts necessarily rely on vapors and allusions. Through the process adopted by the Court, judicial control was clearly "abdicated to the caprice of executive officers." The Court surrendered to the executive branch quintessential judicial duties over questions of privileges and evidence. The Court served not justice but the executive branch. It signaled that in this type of national security case, the courtroom tilts away from the private litigant and becomes a safe house for executive power.

The Supreme Court had two valid avenues before it. It could have followed the path taken by the district court and the Third Circuit, deciding in favor of the three widows because the government declined to release the accident report and the survivor statements. As an alternative, it could have asked the government to submit the disputed documents to the district court for in camera review. Instead, the Court selected a third option that was the least justified, assuming on the basis of ambiguous statements produced by the government that the claim of state secrets had merit. In so doing, it resorted to a jumbled reasoning process that in the hands of some lower courts, injured the rights of private citizens and did damage to fair procedures and the rule of law. By failing to examine the documents, the Court took the risk of being fooled. As it turned out, it was, raising disturbing questions about the capacity of the judiciary to function as an independent, trusted branch in the field of national security.

[80] *United States v. Reynolds*, 345 U.S. at 8.
[81] Ibid., 9.
[82] Ibid., 9–10.

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Fraud Against the Court

Judith Loether was seven weeks old when her father, Albert Palya, died in the B-29 crash. As she grew up, she learned that he had been killed in an effort to develop secret equipment. After she had her first son in 1975, she began thinking more about her father's death. By the time she turned 41, she had a better appreciation of how young her father was at the time of the accident. She began researching the B-29 and the special equipment it carried.

On 10 February 2000, she stayed overnight with friends and decided to sit down at the computer. For the first time, she entered the combination "B-29" plus "accident" into a search engine. The first hit that came up was a Web site run by Michael Stowe, Accident-Report.com. He had a hobby of collecting and selling military accident reports.[83] He told Judy Loether he had the accident report she wanted. Within a couple of weeks she had the report and began reading it with great care, expecting to find passages on state secrets. To her surprise, there were none. The report contained a few references to "secret equipment," but she already knew that from newspaper stories that appeared the day after the crash. She began sending out postcards to find the other two civilian families involved in the B-29 crash: the Brauners and Patricia J. Herring.[84]

Loether, the Brauners, and Herring decided to sue the government for deceiving the federal courts. Eventually they turned to the law firm that had brought the original case, Drinker Biddle. The firm filed a motion for a writ of *coram nobis*, charging that the government had misled the Supreme Court and committed fraud against it. The writ is a motion to a court to review and correct its judgment because it was based on an error of fact. In 1827, Justice Joseph Story recognized the fundamental principle at play: "Every Court must be presumed to exercise those powers belonging to it, which are necessary for the promotion of public justice; and we do not doubt that this Court possesses the power to reinstate any cause, dismissed by mistake."[85]

Two principles of law compete. One is the general rule of judicial finality. As expressed by the Supreme Court in 1944, society is well served "by putting an end to litigation after a case has been tried and judgment entered."[86] Bringing finality to a legal dispute offers important benefits, but a second principle also demands respect. A court needs to revisit a judgment after discovering that fraud has cast a shadow over the original ruling. Tolerating fraud in a particular case reduces respect for judges and lowers confidence in the courts. Serious consequences follow in allowing fraud to infect a ruling: "Tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot

[83] Fisher, *In the Name of National Security*, 166.
[84] E-mail to author from Patricia J. Herring.
[85] *The Palmyra*, 12 Wheat. 1, 10 (1827).
[86] *Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238, 244 (1944).

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complacently be tolerated consistently with the good order of society.... The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpful victims of deception and fraud."[87]

On 4 March 2003, Wilson M. Brown III, of Drinker Biddle & Reath, petitioned the Supreme Court for a "writ of error *coram nobis* to remedy fraud upon this Court." The petition asked the Court to vacate its decision in *Reynolds* and reinstate the original judgment by the district court; award the widows and their families damages to compensate them for their losses; and award them attorneys fees and single or double costs as a sanction against the government's misconduct.[88] With the benefit of the declassified accident report and survivor statements, the petition detailed specific negligence by the Air Force that led to the accident.[89] The government filed a brief opposing the petition.[90] Without explanation, the Court on 23 June 2003 issued this ruling: "Motion for leave to file a petition for writ of error *coram nobis* denied."[91] The three families would have to start over again in the lower courts.

On 1 October 2003, the families filed an action in district court for relief from judgment in order to remedy fraud on the court. They argued that the government's action "was intended to and did subvert the processes of this Court, the Court of Appeals, and the United States Supreme Court."[92] In an opposing brief, the government denied that the statements signed by Finletter and Harmon constituted lies: "Neither Secretary Finletter's claim of privilege, nor General Harmon's affidavit, makes any specific representation concerning the contents of those documents [the accident report and witness statements]."[93] Yet it was because of the Finletter–Harmon statements that both the district court and the Third Circuit supported in camera review and the Supreme Court was convinced that the accident report contained secret information.

There was a reason for the government to withhold the accident report from Judge Kirkpatrick. The report revealed clear negligence on the part of the Air Force, which had not installed heat shields and had failed to brief the civilian engineers before the flight on the use of parachutes and emergency aircraft evacuation.[94] Had Kirkpatrick looked at the report, it would have been clear that the government had lied in its response to Question 31 of the interrogatories, which asked whether any modifications had been prescribed for the B-29 engines to prevent overheating and reduce the risk of fire hazard. The

[87] Ibid., 246. For examples of *coram nobis* cases, see Fisher, *In the Name of National Security*, 170–176.

[88] Petition for a Writ of Error *Coram Nobis* to Remedy Fraud upon This Court, In re Patricia J. Herring, No. 02M76, i.

[89] Fisher, *In the Name of National Security*, 177–182.

[90] Ibid., 182–186.

[91] *In re Herring*, 539 U.S. 940 (2003).

[92] Independent Action for Relief from Judgment to Remedy Fraud on the Court, *Herring v. United States* (E.D. Pa. 2003), 14.

[93] Brief in Support of Defendant's Motion to Dismiss, *Herring v. United States*, Civil Action No. 03-5500 (LDD) (E.D. Pa. 2004), 18 n.6.

[94] Fisher, *In the Name of National Security*, 192–193.

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government's answer: no.[95] Reading the declassified accident report today, it is obvious that other answers by the government were either inaccurate or false.

Through its own doing, the government faced serious problems. The first was negligence by the Air Force. Why not simply concede mistakes and pay the widows the sums that Judge Kirkpatrick had awarded: $80,000 each to Phyllis Brauner and Elizabeth Palya, and $65,000 to Patricia Herring?[96] The answer to the three families in 2003 was the desire of the government to "fabricat[e] a 'test case' for a favorable judicial ruling on claims of an executive or 'state secrets' privilege—a case built on the fraudulent premise that the documents in question contained 'secret' military or national security information."[97]

District Judge Legrome D. Davis held oral argument on 11 May 2004. Both sides spent considerable time trying to divine the meaning of the Finletter–Harmon statements. Wilson Brown said that the Finletter statement "could not have been clearer" in saying that the Air Force objected to releasing the documents because they were "concerned with this confidential mission and equipment of the Air Force," and that there was an intent on the part of the government to suggest to the courts that these documents "contained references to confidential missions and descriptions of confidential equipment that were secret."[98] The government denied that the Finletter statement made representations "regarding the contents of the report or ... that the report actually contains any specific description of the equipment or the nature of the mission, although there actually is an allusion to the nature of the mission."[99]

In the original litigation, apparently none of the judges or justices ever said to the government: "We have no idea what those statements mean. Do they say that the accident report and the survivor statements contain military secrets or state secrets?" Would the government have replied: "Why, no, Your Honor. Those documents, requested by the plaintiffs, do not contain any military secrets or state secrets"? It was to the government's advantage to allow the statements to remain ambiguous. It was the responsibility of the plaintiffs and the judiciary to remove the cloud. Instead, they left it there.

Judge Davis released his decision on 10 September 2004, granting the government's motion to dismiss and instructing the Clerk of Court to "statistically close this matter."[100] He deferred to the government in this manner: "In all likelihood, fifty years ago the government had a more accurate understanding 'on the prospect of danger to [national security] from the disclosure of secret

[95] Plaintiffs' Memorandum in Opposition to Defendant's Motion to Dismiss, *Herring v. United States*, Civil Action No. 03-5500 (LDD) (E.D. Pa. 2004), 11 (hereafter "Plaintiffs' Memorandum").

[96] Fisher, *In the Name of National Security*, 58.

[97] Plaintiffs' Memorandum, 12.

[98] Transcript of Hearing Before the Honorable Legrome D. Davis, *Herring v. United States*, CV-03-5500 LDD (E.D. 11 May 2004), 18.

[99] Ibid., 41.

[100] Memorandum and Order, *Herring v. United States*, Civil Action No. 03-CV-5500-LDD (E.D. Pa. 20 September 2004), 21.

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and sensitive information' than lay persons could appreciate or that hindsight now allows."[101] That is not only pure assumption on Davis's part but improperly implies that "disclosure" to Judge Kirkpatrick would have been disclosure to the public.[102]

The families appealed to the Third Circuit. On 22 September 2005, the appellate court decided in favor of the government. The second paragraph made it clear where the court would end up: "Actions for fraud upon the court are so rare that this Court has not previously had the occasion to articulate legal definition of the concept. The concept of fraud upon the court challenges the very principle upon which our judicial system is based: the finality of a judgment."[103] What counted most for the Third Circuit was not having to revisit and redo an earlier decision, even if the government had misled the judiciary.

When the government invokes the state secrets privilege, one expects information that is so crucial and sensitive to national security that it cannot be shared even with a judge in chambers. The Third Circuit pointed to three possible state secrets: "The accident report revealed, for example, that the project was being carried out by 'the 3150th Electronics Squadron,' that the mission required an 'aircraft capable of dropping bombs' and that the mission required an airplane capable of 'operating at altitudes of 20,000 feet and above.'"[104] The last two elements cannot be a state secret. It was public knowledge that the confidential equipment was on board a B-29 flying at 20,000 feet and that the aircraft was capable of dropping bombs. That's what bombers do. It is implausible to regard the other two elements as so sensitive in nature that they could not have been submitted for in camera review. On 1 May 2006, the Supreme Court refused to take the case.[105]

The value given short shrift in this *coram nobis* case is the need to protect the integrity, independence, and reputation of the federal judiciary. The Supreme Court in *Reynolds* accepted at face value the government's assertion that the accident report and survivors' statements contained state secrets. That assertion was false. By accepting the government's claim and by not examining the documents, the Court appeared to function as an arm of the executive branch and failed to exercise independent judgment. When courts operate in that manner, litigants and citizens lose faith in the judiciary, the rule of law, and the system of checks and balances.

The Judge Runs the Courtroom

Deciding questions of privileges and access to evidence is central to the conduct of a trial by the judge. In his standard treatise on evidence, John Henry

[101] Ibid., 8 (citing *Halperin v. NSC*, 452 F.Supp. 47 [D.D.C. 1978]).
[102] Fisher, *In the Name of National Security*, 198–200.
[103] *Herring v. United States*, 424 F.3d 384, 386 (3d Cir. 2005).
[104] Ibid., 391 n.3.
[105] 126 S.Ct. 1909 (2006).

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Wigmore recognized the existence of "state secrets" but also concluded that the scope of that privilege had to be decided by a judge, not executive officials. He agreed that there "must be a privilege for *secrets of State,* i.e. matters whose disclosure would endager [sic] the Nation's governmental requirements or its relations of friendship and profit with other nations." Yet he cautioned that this privilege "has been so often improperly invoked and so loosely misapplied that a strict definition of its legitimate limits must be made."[106] On the duty to give evidence, Wigmore was unambiguous: "Let it be understood, then, that there is no exemption, for officials as such, or for the Executive as such, from the universal testimonial duty to give evidence in judicial investigations."[107] Wigmore posed the key question: Who should determine the necessity for secrecy? The executive or the judiciary? As with other privileges, it should be the court: "Both principle and policy demand that the determination of the privilege shall be for the Court."[108]

The issues explored by Wigmore resurfaced in the late 1960s and early 1970s, when expert committees attempted to define "state secrets" and determine which branch should decide the scope and application of privileges in court. An Advisory Committee on Rules of Evidence, appointed by Chief Justice Earl Warren in March 1965, held its initial meeting and began work three months later. In December 1968, the committee completed a preliminary draft of rules of evidence. Among the many proposals was Rule 5-09, covering "secrets of state," defined as "information not open or theretofore officially disclosed to the public concerning the national defense or the international relations of the United States."[109] Nothing in that definition prevented the executive branch from releasing state secrets to a judge to be read in chambers. It merely restricted the disclosure of information *to the public.*

The committee recognized that the government "has a privilege to refuse to give evidence and to prevent any person from giving evidence upon a showing of substantial danger that the evidence will disclose a secret of state."[110] Drawing language and ideas from *Reynolds*, the committee said that the privilege may be claimed only by the chief officer of the department administering the subject matter that the secret concerned. That officer would be required to make a showing to the judge, "in whole or in part in the form of a written statement." The trial judge "may hear the matter in chambers, but all counsel are entitled to inspect the claim and showing and to be heard thereon."[111] The judge "may take any protective measure which the interests of the government and the furtherance of justice may require."[112]

[106] Wigmore, *Evidence in Trials at Common Law*, § 2212a (emphasis in original).
[107] Ibid., § 2370.
[108] Ibid., § 2379.
[109] 46 F.R.D. 161, 272 (1969).
[110] Ibid., 273.
[111] Ibid.
[112] Ibid.

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If the judge sustained a claim of privilege for a state secret involving the government as a party, the court would have several options. When the claim deprived a private party of "material evidence," the judge could make "any further orders which the interests of justice require, including striking the testimony of a witness, declaring a mistrial, finding against the government upon an issue as to which the evidence is relevant, or dismissing the action."[113] The draft report placed final control with the judge, not the agency head.

Because of that feature and others, the Justice Department vigorously opposed the draft. It wanted the proposed rule changed to recognize that the executive's classification of information as a state secret was final and binding on judges.[114] A revised draft, renumbering the rule from 5-09 to 509, was released in March 1972. It eliminated the definition of "a secret of state" and therefore had to strike "secret" from various places in the rule. The new draft rewrote the general rule of privilege to prevent any person from giving evidence upon a showing of "reasonable likelihood of danger that the disclosure of the evidence will be detrimental or injurious to the national defense or the international relations of the United States."[115] Final control remained with the judge.

In addition to opposition from the Justice Department, several prominent members of Congress voiced their objections, partly because of the legislative procedure used to adopt rules of evidence for the courts (giving Congress only 90 days to disapprove). Objections were aimed at Rule 509, which some lawmakers thought weakened the Court's decision in *Reynolds*.[116] Deputy Attorney General Richard Kleindienst wanted the rule rewritten to recognize that the government had the privilege not to disclose "official information if such disclosure would be contrary to the public interest."[117] The Justice Department insisted that once a department official, pursuant to executive order, decided to classify information as affecting national security, that judgment must be regarded as having "conclusive weight" in determining state secrets unless the classification was "clearly arbitrary and capricious."[118]

How would that procedure work? Which branch would decide that the classification was clearly arbitrary and capricious, and on what grounds? Would final judgment be left to the self-interest of the executive branch? Only a court could provide an effective, credible, and independent check. To reach an informed conclusion, the judge had to examine the document.

The Supreme Court sent the proposed rules of evidence to Congress on 5 February 1973, to take effect 1 July 1973. New language for Rule 509 included a redrafted definition of "secret of state": "A 'secret of state' is a governmental

[113] Ibid., 273–274.

[114] Charles Alan Wright and Kenneth W. Graham, Jr., eds., *Federal Practice and Procedure*, vol. 26 (St. Paul, MI: West Publishing Co., 1992), 423.

[115] 51 F.R.D. 315, 375 (1971).

[116] 117 Congressional Record 29894–29896 (1971).

[117] Ibid., 33648.

[118] Ibid., 33652–33653.

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secret relating to the national defense or the international relations of the United States."[119] Congress concluded that it lacked time to thoroughly review all the proposed rules of evidence within 90 days and vote to disapprove particular ones. It passed legislation to provide that the proposed rules "shall have no force or effect" unless expressly approved by Congress.[120] Approval never came. Among the rejected rules was Rule 509.

Congress passed the rules of evidence in 1975, including Rule 501 on privileges. It comes down squarely on the side of authorizing courts to decide the scope of a privilege. The rule covers all parties to a case, including the government. It does not recognize any authority on the part of the executive branch to dictate the reach of a privilege. There is no acknowledgment of state secrets. The only exception in Rule 501 concerns civil actions at the state level. Rule 501 provides: "Except as otherwise required by the Constitution of the United States or provided by Act of Congress or in rules prescribed by the Supreme Court pursuant to statutory authority, the privilege of a witness, person, government, State, or political subdivision thereof shall be governed by the principles of the common law *as they may be interpreted by the courts* of the United States in the light of reason and experience."[121]

The legislative history of Rule 501 explains how and why the provisions on state secrets were deleted.[122] When the bill reached the House floor, it came with a closed rule that prohibited amendments. The privileges covered by the rule (including government secrets, husband and wife, physician and patient, and reporters) were considered "matters of substantive law" rather than rules of evidence: "We were so divided on that subject ourselves, let alone what the House would be, that we would never get a bill if we got bogged down in that subject matter which really ought to be taken up separately in separate legislation."[123] The Senate Judiciary Committee also reported on the fractious nature of the rule on privileges: "Critics attacked, and proponents defended, the secrets of state and official information privileges," the husband-wife privilege "drew fire," the doctor-patient privilege "seemed to satisfy no one," the attorney-client privilege "came in for its share of criticism," and many objections were raised over the failure to include a reporter's privilege.[124] Under those cross-pressures, Congress abandoned Rule 509.[125]

Executive officials who invoke the state secrets privilege often understand that the branch that decides questions of privileges and evidence is the judi-

[119] 56 F.R.D. 183, 251 (1972).

[120] 119 Congressional Record 3755, 7651–7652 (1973); Act of 30 March 1973, Public Law 93-12, 87 Stat. 9 (1973).

[121] 88 Stat. 1934 (1975) (emphasis added).

[122] H. Rept. No. 93-650, 93d Cong., 1st sess. (1973), 8.

[123] 120 Congressional Record 1409 (1974) (statement by Rep. Dennis).

[124] S. Rept. No. 93-1277, 93d Cong., 2d sess. (1974), 6.

[125] Louis Fisher, "State Your Secrets: When the Government Cloaks Itself in Privilege, Judges Must Rule," *Legal Times*, 26 June 2006, 68-69.

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ciary, not the executive. On 10 February 2000, CIA Director George J. Tenet signed a formal claim of state secrets in the case of Richard M. Barlow, adding: "I recognize it is the Court's decision rather than mine to determine whether requested material is relevant to matters being addressed in litigation."[126] That language stands as a model of executive subordination to the rule of law and undergirds the constitutional principle of judicial independence.

Invoking the Privilege at a Cost

If the government decides to invoke the state secrets privilege, courts have many effective methods to protect their integrity. They can advise the executive branch that if it persists in asserting the privilege, to the point of withholding requested documents from in camera inspection, it will lose the case. That was the position taken by the district court and the Third Circuit in *Reynolds*. It was the proper position, and the Supreme Court would have protected its dignity and independence by following the same course. It failed to do so and paid a price, as did the three widows. Telling the executive branch it will lose a case applies to three categories of cases: when the government brings a criminal case, when it brings a civil case, and when it is a defendant, as it was in the tort claims case of *Reynolds*.

In criminal cases, it has long been recognized that if federal prosecutors want to charge someone with a crime, the defendant has a right of access to documents to establish innocence. In *Reynolds*, the government's brief to the Supreme Court cited the trial of Aaron Burr in 1807 as an example of when the government had "refused to divulge, in response to subpoenas, confidential portions of documents in the possession of the executive."[127] Later in the brief, the government produced a list of "successful assertions of the [evidentiary] privilege," including the Burr trial.[128] The facts are otherwise. Aaron Burr was charged with treason and faced the death penalty. For that reason, the administration of Thomas Jefferson understood that he had a right to whatever documents were needed to clear his name. The presiding judge at the trial, Chief Justice John Marshall, stated his willingness to suppress certain documents upon learning "it is not the wish of the executive to disclose," but immediately added: "if it be not immediately and essentially applicable to the point."[129] Marshall was concerned that the judiciary would lose respect if it failed to give an accused access to information needed for his defense. Withholding docu-

[126] Declaration of Formal Claim of State Secrets Privilege and Statutory Privilege by George J. Tenet, Director of Central Intelligence, *Richard M. Barlow v. United States*, Congressional Reference No. 98-887X, U.S. Court of Federal Claims, 7.

[127] Brief for the United States, *United States v. Reynolds*, No. 21, U.S. Supreme Court, October Term, 1952, 10–11.

[128] Ibid., 24.

[129] *United States v. Burr*, 25 Fed. Cas. 30, 37 (C.C.D. Va. 1807) (Case No. 14,692d).

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ments in a criminal case would "tarnish the reputation of the court which had given its sanction to its being withheld." Were he a party to this withholding, Marshall said he would be compelled "to look back on any part of my official conduct with so much self-reproach as I should feel."[130]

The record shows that Jefferson was ready "to furnish on all occasions whatever the purposes of justice may require" and had given one letter to Attorney General Caesar Rodney to be taken to Richmond for the trial, and expressed "a perfect willingness to do what is right."[131] George Hay, one of the government attorneys handling the prosecution, thought there might be some matters in the letters "which ought not to be made public," but was willing to put them "in the hands of the clerk confidentially, and he could copy all those parts which had relation to the cause."[132] Hay stood ready to show the letters to Burr's attorneys for examination, and he "would depend on their candor and integrity to make no improper disclosures; and if there should be any difference of opinion as to what were confidential passages, the court should decide."[133] In the end, the jury found Burr not guilty on the charge of treason and not guilty on a second charge, a misdemeanor.[134]

In the decade before *Reynolds*, federal courts had reviewed procedures for allowing access to documents in a criminal case. They disagreed that judicial deference to executive departments could allow the suppression of documents in a criminal proceeding that might "tend to exculpate."[135] In such situations, the government must choose: "Either it must leave the transactions in the obscurity from which a trial will draw them, or it must expose them fully."[136] If the government decides to prosecute someone, it must either release documents that are exculpatory or drop the case. In 1946, the Second Circuit reminded the government that when it "institutes criminal proceedings in which evidence, otherwise privileged under a statute or regulation, becomes importantly relevant, it abandons the privilege."[137]

The Watergate tapes case involved executive privilege, not state secrets, but in ruling against President Richard Nixon, the Supreme Court recognized that in a criminal case, where defendants need information to protect their rights in court, the president's general authority over agency information cannot override the specific need for evidence.[138] "The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public

[130] Ibid.
[131] Ibid., 65.
[132] Ibid., 190.
[133] Ibid.
[134] Fisher, *In the Name of National Security*, 212–220.
[135] *United States v. Andolschek*, 142 F.2d 503, 506 (2d Cir. 1944).
[136] Ibid.
[137] *United States v. Beekman*, 155 F.2d 580, 584 (2d Cir. 1946).
[138] *United States v. Nixon*, 418 U.S. 683 (1974).

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confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence."[139]

In the Watergate tapes case, the Court noted: "We are not here concerned with the balance between the President's generalized interest in confidentiality and the need for relevant evidence in civil litigation."[140] Still, lower courts frequently tell the government that when it brings a civil case against a private party, it must be prepared to either surrender documents sought by the defendant or drop the charges. Once a government official seeks relief in a court of law, the official "must be held to have waived any privilege, which he otherwise might have had, to withhold testimony required by the rules of pleading or evidence as a basis for such relief."[141] The choice: give up the privilege or abandon the case.

In 1958, the Eighth Circuit dismissed a lawsuit brought by the Secretary of Labor after he refused to obey court orders directing him to produce for the defendants four statements taken by the Secretary's investigators. The government argued that the statements were privileged. To the court, the issue of privilege was one for the judiciary.[142] In 1961, the government lost a case when the National Labor Relations Board refused to permit testimony sought by a company charged with unfair labor practices. The Fifth Circuit insisted that "fundamental fairness" required that the company "be allowed to introduce testimony that may impeach the evidence offered against it. The N.L.R.B. cannot hide behind a self-erected wall evidence adverse to its interest as a litigant."[143] Other decisions underscore the principle that when the government brings a civil suit, it waives any privilege.[144]

When a private party brings a case against the government, as in a tort claims action, the government may be put in the position of either releasing requested documents or losing the case. In *Reynolds*, both the district court and the Third Circuit told the government that if it insisted on withholding the accident report and the survivor statements, it would lose. Only at the level of the Supreme Court was the government allowed to both withhold documents and prevail on the merits. To prevent abuse of the judiciary, a trial court must at least conduct in camera review to judge the government's claim of privilege, including state secrets. "Any other rule would permit the Government to classify documents just to avoid their production even though there is need for their production and no true need for secrecy."[145]

[139] Ibid., 709.

[140] Ibid., 712 n.19.

[141] Ibid. See also *United States v. Cotton Valley Operators Committee*, 9 F.R.D. 719 (D. La. 1949), judgment aff'd, 339 U.S. 940 (1950).

[142] *Mitchell v. Bass*, 252 F.2d 513, 517 (8th Cir. 1958).

[143] *NLRB v. Capitol Fish Co.*, 294 F.2d 868, 875 (5th Cir. 1961).

[144] *United States v. San Antonio Portland Cement Co.*, 33 F.R.D. 513, 515 (D. Tex. 1963); *United States v. Gates*, 35 F.R.D. 524, 529 (D. Colo. 1964); *General Engineering, Inc. v. NLRB*, 341 F.2d 367, 376 (9th Cir. 1965).

[145] *American Civil Liberties U. v. Brown*, 619 F.2d 1170, 1173 (7th Cir. 1980).

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In 1977, private citizens sued the government after the arrest of over a thousand persons who demonstrated against the Vietnam War. The plaintiffs subpoenaed White House tapes. The D.C. Circuit rejected the position that a presidential privilege of confidentiality "was absolute in the context of civil litigation."[146] The court emphasized that there is "a strong constitutional value in the need for disclosure in order to provide the kind of enforcement of constitutional rights that is presented by a civil action for damages, at least where, as here, the action is tantamount to a charge of civil conspiracy among high officers of government to deny a class of citizens their constitutional rights and where there has been sufficient evidentiary substantiation to avoid the inference that the demand reflects mere harassment."[147]

Conclusions

The courts must take care to restore confidence in the judiciary, in the sanctity of the courtroom, and in the system of checks and balances. The state secrets privilege is qualified, not absolute. Otherwise there is no adversary process in court, no exercise of judicial independence over what evidence is needed, and no fairness accorded to private litigants who challenge the government. In 1971, the D.C. Circuit stated that an "essential ingredient of our rule of law is the authority of the courts to determine whether an executive official or agency has complied with the Constitution and with the mandates of Congress which define and limit the authority of the executive. Any claim to executive absolutism cannot override the duty of the court to assure that an official has not exceeded his charter or flouted the legislative will."[148] To grant an executive official absolute authority over agency documents would empower the government "to cover up all evidence of fraud and corruption when a federal court or grand jury was investigating malfeasance in office, and this is not the law."[149]

There is no justification in law or history for a court to acquiesce to the accuracy of affidavits, statements, and declarations submitted by the executive branch. To defer to agency claims about privileged documents and state secrets is to abandon the independence that the Constitution vests in the courts and place in jeopardy the individual liberties that depend on institutional and public checks.

[146] *Dellums v. Powell*, 561 F.2d 242, 244 (D.C. Cir. 1977).

[147] Ibid., 247; see Louis Fisher, "State Secrets Privilege: Invoke It at a Cost," *National Law Journal* 31 (July 2006): 23.

[148] *Committee for Nuclear Responsibility, Inc. v. Seaborg*, 463 F.2d 788, 793 (D.C. Cir. 1971).

[149] Ibid., 794.

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The UN Security Council's Response to Terrorism: Before and After September 11, 2001

HILDE HAALAND KRAMER
STEVE A. YETIV

The horrific terrorist attacks of September 11 shocked not only the United States but also many other actors around the world. September 11 represented perhaps the first time in history that the action of a transnational actor so altered the course of international relations. Not only did it spawn the American war on terrorism and associated conflicts in Afghanistan and Iraq, it also raised serious questions about the future of the world, about unrestrained and elusive transnational terrorism, and about how the terrorist threat to the global community could be contained. Not surprisingly, overwhelming public and academic attention has focused on the attacks. Scholars, policymakers, and laymen have asked a variety of probing questions: What motivated the terrorists? Did the attacks suggest or presage a broader clash of civilizations between the Judeo-Christian and Muslim worlds? To what extent was the American response to the attacks sensible?

Yet, while much attention has been focused on these questions, other critical questions have received less scrutiny. Indeed, while the UN's role in addressing terrorism drew more attention after September 11 than it had before the attacks,[1] relatively little work has explored the UN Security Council's

[1] Prior to September 11, the UN Security Council and its work drew significant attention from the international community and from scholars, but the issue of global terrorism and the Security Council's response to it was largely ignored. Jane Boulden and Thomas G. Weiss note that the Council's response to terrorism was "largely peripheral to mainstream analysis of either UN affairs

HILDE HAALAND KRAMER is a doctoral student in International Studies at Old Dominion University. STEVE A. YETIV is a professor of political science at Old Dominion University. His recent books are *Crude Awakenings: Global Oil Security and American Foreign Policy* (Cornell University Press, 2004), *Explaining Foreign Policy* (Johns Hopkins University Press, 2004), and *The Absence of Grand Strategy* (Forthcoming, Johns Hopkins University Press, 2008).

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response to the attacks of September 11.[2] And no work has explored its response to September 11 by use of a systematic comparison of the periods immediately before and after the attacks.

The Argument

Evidence strongly suggests that September 11 was a critical event in the UN Security Council's response to global terrorism. Its response post–September 11 has been more forceful and comprehensive than it was prior to September 11 and has broken some new ground. When assessed by the standards of its past record, the UN's response to the events of September 11, while plagued by a number of significant challenges, represents an improvement in the fight against global terrorism.

This outcome is important to American foreign policy. Indeed, as we elaborate upon in the conclusion of this article, the importance of the United Nations to the United States has been in doubt among American elites and the American public, and not without reason. Detractors point to the UN bureaucracy as sclerotic; to an organization with ethical problems, including the oil-for-food problem and a questionable Human Rights Council; and to an anti-American and anti-Israeli bias in the General Assembly. Yet, while the UN has been and remains controversial in the United States, this study suggests that Washington largely benefited from the UN's response to terrorism in the post–September 11 period, as imperfect as it has been.

The Method

This paper explores the response of the Security Council to terrorism from the late 1980s to the present time, but with a particular emphasis on the periods immediately before and after the attacks of September 11. To the extent that the subject allows, we employ the diachronic method of comparison to examine the behavior of the UN prior to and then after September 11. Scholars use the comparative method either cross-nationally or diachronically. The latter method offers a better solution to the problem of controlling variables than do cross-national studies because, as Arend Lijphart pointed out some time ago,

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or U.S. foreign policy." Jane Boulden and Thomas G. Weiss, "Whither Terrorism and the United Nations?" in Jane Boulden and Thomas G. Weiss, eds., *Terrorism and the UN, Before and After September 11* (Bloomington: Indiana University Press, 2004), 5.

[2] See Boulden and Weiss, "Whither Terrorism"; Chantal de Jonge Oudraat, "The Role of the Security Council" in Boulden and Weiss, eds., *Terrorism and the UN*, 151–172; Edward C. Luck, "Tackling Terrorism" in David M. Malone, ed., *The UN Security Council, From the Cold War to the 21st Century* (Boulder, CO and London: Lynne Rienner Publishers, 2004); and Nicholas Rostow, "Before and After: The Changed UN Response to Terrorism since September 11th," *Cornell International Law Journal* 35 (2002): 475–490.

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it involves more constants and fewer variables, since fewer variables change over time than over both time and place.[3]

In order to gauge the UN response, this paper will look at the resolutions passed by the Security Council, because they are the official and legal expression of the Council's intent, power, and jurisdiction. In particular, we will compare five different factors before and after the attacks: first, the general thrust of major UN resolutions; second, the number of UN resolutions adopted in response to terrorism; third, the gravity, content and importance of these resolutions; fourth, the tools made available and used by the UN to deal with terrorism; and fifth, compliance by UN member states with UN resolutions dealing with terrorism. This combination of indicators provides a good sense of how the UN Security Council responded to the attacks of September 11.

Background and General Thrust of Major Resolutions on Terrorism

This section offers some background on the UN's role in addressing terrorism and also sketches the general thrust of major UN resolutions on terrorism before and after September 11. The international community's efforts at cooperation against terrorism are long-standing. Yet, the UN Charter fails to mention terrorism directly, "either as one of its many diverse concerns or as a threat to international peace and security."[4] What it does state, in chapters V and VII, is that it is the duty of the Security Council "to maintain international peace and security in accordance with the principles and purposes of the United Nations; ... to determine the existence of a threat to the peace or act of aggression and to recommend what action should be taken; ... to call on Members to apply economic sanctions and other measures not involving the use of force to prevent or stop aggression; [and] to take military action against an aggressor."[5] Though terrorism has presented a threat to international peace and security for centuries, for most of the history of the United Nations, states have treated terrorism as a matter of national and local concern and have decided not to bring it to the attention of the UN.[6] This started to change in the late 1980s and 1990s.

[3] Arend Lijphart, "Comparative Politics and the Comparative Method," *American Political Science Review* 65 (September 1971): 689. On the general challenges of such an approach, see Donald T. Campbell, *Methodology and Epistemology for the Social Sciences* (Chicago, IL: University of Chicago Press, 1988), 226–227.

[4] Edward C. Luck, "Another Belligerent: The United Nations and the War on Terrorism" in Richard M. Price and Mark W. Zacher, eds., *The United Nations and Global Security* (New York: Palgrave Macmillian, 2004), 97.

[5] UN Security Council, "Functions and Powers," accessed on the website of the United Nations at http://www.un.org/Docs/sc/unsc_functions.html, 1 February 2006.

[6] Edward C. Luck, "Global Terrorism and the United Nations: A Challenge in Search of a Policy," accessed on the website of United Nations and Global Security, An Initiative of the United Nations Foundation, at http://www.un-globalsecurity.org/pdf/Luck_paper_terrorism.pdf, 15 March 2006, 1.

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The Security Council did not deal with questions of global terrorism until 1989. Before that (as well as later), the broad subject of terrorism was mostly considered by the General Assembly, more specifically by the Sixth (Legal) Committee of the General Assembly.[7] The Assembly sought to encourage cooperation among states in the development of an international legal framework for dealing with terrorism. The main contribution of the General Assembly has been in writing and adopting several conventions that deal with different aspects of acts of terrorism—13 in all.[8] These conventions address, among other areas, airplane hijacking, protected persons, hostage taking, the handling of nuclear material, plastic explosives, aviation, and maritime navigation. The most recent achievement of the Assembly is the Global Counter-Terrorism Strategy, which was adopted on 8 September 2006.[9] The Plan of Action includes measures to address the root causes of terrorism, measures to prevent and fight terrorism, measures to build the individual state's capacity to fight terrorism, and measures to ensure respect for human rights and the rule of law.[10]

In 1989, the Security Council passed its first resolution on terrorism when Resolution 635, on plastic or sheet explosives, was adopted unanimously. Chantal de Jonge Oudraat argues that the Security Council's attention to global terrorism in the 1990s was motivated by new developments in the activities of international terrorism: more attacks were aimed at U.S. facilities and citizens; the number of casualties per incident increased; terrorism became global, with transnational networks; the threat of terrorists using chemical, biological, or nuclear weapons seemed more real; and the role of state-supported terrorism became more visible.[11] Resolution 635 was adopted in reaction to the Lockerbie tragedy (Pan Am Flight 103) on 21 December 1988 and states that

> The Security Council, *Conscious* of the implications of acts of terrorism for international security, ... *Mindful* of the important role of the United Nations in supporting and encouraging efforts by all States and intergovernmental organizations in preventing and eliminating all acts of terrorism, including those involving the use of explosives, *Determined* to encourage the promotion of effective mea-

[7] Rostow, "Before and After," 479.

[8] Twelve treaties have been ratified and are in force. One hundred and fifteen countries have signed the thirteenth, the International Convention for the Suppression of Acts of Nuclear Terrorism, New York, 13 April 2005, but only 21 countries have ratified it as of 30 May, 2007. The convention will enter into force when 22 countries have ratified it; accessed at the UN Treaty Collection website at http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty19.asp, 5 June 2007.

[9] General Assembly, A/RES/60/288, accessed on the website of the United Nations at http://daccessdds.un.org/doc/UNDOC/GEN/N05/504/88/PDF/N0550488.pdf?OpenElement, 5 June 2007.

[10] For more information on A/RES/60/288 and the annexed Plan of Action see "UN Action to Counter Terrorism," at http://www.un.org/terrorism/strategy/.

[11] Oudraat, "The Role of the Security Council," 151–152.

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> sures to prevent acts of terrorism, ... *Calls upon* all States to co-operate in devising and implementing measures to prevent all acts of terrorism, including those involving explosives, ... [and] *Urges* all States, and in particular the producers of plastic or sheet explosives, to intensify research into means of making such explosives more easily detectable, and to co-operate in this endeavour.[12]

Resolution 635 established the United Nations and the Security Council as a venue for dealing with terrorism. It asserted that terrorism is a threat to international peace and security, the main area of concern for the Security Council, and laid the groundwork for the Security Council's future work on terrorism.

For the United States as well as the international community at large, the attacks of September 11 were a watershed event in many respects. This is also true of the United Nations' handling of terrorism as a threat to international peace and security. With a swiftness and decisiveness unprecedented in UN history, the Security Council unanimously adopted Resolution 1368 within 24 hours of the attacks.[13] The resolution condemned, in no uncertain terms, the terrorist attacks on the United States:

> The Security Council, *Reaffirming* the principles and purposes of the Charter of the United Nations, *Determined* to combat by all means threats to international peace and security caused by terrorist acts, *Recognizing* the inherent right of individual or collective self-defence in accordance with the Charter, ... *Unequivocally condemns* in the strongest terms the horrifying terrorist attacks which took place on 11 September 2001 in New York, Washington (D.C.) and Pennsylvania and *regards* such acts, like any act of international terrorism, as a threat to international peace and security.[14]

The resolution, furthermore, "calls on all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks" and "calls also on the international community to redouble their efforts to prevent and suppress terrorist acts."[15] This resolution laid the foundation for the new, more assertive focus of the Security Council on international terrorism. Most significantly, it "reaffirmed the inherent right of self-defense in accordance with Article 51 of the UN Charter," and represented the first time that self-defense was acknowledged by the Security Council as a legitimate response to terrorism.[16] Jane Boulden and Thomas G. Weiss argue that by explicitly confirming a member state's right to self-defense, the Security

[12] UN Security Council, S/RES 635 (1989), accessed on the website of the United Nations at http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/557/72/IMG/NR055772.pdf?OpenElement, 15 March 2006.

[13] See Luck, "Tackling Terrorism," 85.

[14] UN Security Council, S/RES/1368 (2001), accessed on the website of the United Nations at http://daccessdds.un.org/doc/UNDOC/GEN/N01/533/82/PDF/N0153382.pdf?OpenElement, 15 March 2006, 1.

[15] Ibid.

[16] Rostow, "Before and After," 481.

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Council would "effectively opt out of subsequent decision-making and leave the military response to the United States."[17] In fact, while Resolution 1368 enhanced American leverage by affirming the right of self-defense, the Security Council member states also largely rejected that argument as a legal justification for invading Iraq in 2003. This is important because it shows that the Security Council had become a forum for debating self-defense issues, even though its imprimatur was not needed for the use of force by member states.

The second groundbreaking resolution was Resolution 1373, which was adopted unanimously on 28 September 2001, less than three weeks after the attacks. It imposed a number of binding commitments on all member states of the United Nations.[18] These obligations required states to prohibit both active and passive support for terrorists, to deny terrorists financing, and to freeze the assets of terrorists and their supporters. Moreover, states were required to deny safe haven to terrorists, to increase their vigilance against passport and identification forgery, to tighten their border controls, and to work toward enhancing international cooperation against terrorism. This was an unprecedented and far-reaching resolution, which imposed on all states obligations that are usually contained only in treaties.[19] In contrast to the 13 conventions on terrorism, which are binding only on those states that ratify them, Resolution 1373 established for the first time uniform obligations for all 191 member states.[20]

Not only did Resolution 1373 impose far-reaching legal obligations on member states, it also established a mechanism for monitoring the commitment and progress of the members—the Counter-Terrorism Committee (CTC). As Edward Luck points out, this was the "principal innovation of the post-September 11 period."[21] The CTC serves three purposes. The key function is to strengthen the counter-terrorism capacity of UN member states.[22] The Committee also serves to facilitate the delivery of technical assistance to states trying to carry out counter-terrorism mandates.[23] Furthermore, it is also involved in coordinating the counter-terrorism efforts of international, regional, and subregional organizations.[24] The resolution calls on all states to report to the CTC on how they are carrying out the implementation of the resolution no

[17] Boulden and Weiss, "Whither Terrorism," 7.

[18] Oudraat argues that "Resolution 1373 would not have been adopted were it not for the precedents set with the sanctions regimes in the 1990s" in "The Role of the Security Council," 158.

[19] Rostow, "Before and After," 482.

[20] Boulden and Weiss, "Whither Terrorism," 11.

[21] Luck, "Another Belligerent," 99.

[22] David Cortright, George A. Lopez, Alistair Millar, and Linda Gerber, *An Action Agenda For Enhancing the United Nations Program on Counter-Terrorism* (Notre Dame and Goshen: Fourth Freedom Forum and Joan B. Kroc Institute for International Peace Studies at the University of Notre Dame, 2004), accessed at Kroc Institute at http://kroc.nd.edu/polbriefs/Action_Agenda.pdf, 22 May 2006, 3–4.

[23] Ibid.

[24] Ibid.

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later than 90 days from the date of adoption, and afterward according to a CTC-mandated timetable.

Quantitative Changes

While there was a clear difference in the prominence of action against terrorism after September 11, more-particular data also support the finding that the UN responded strongly to terrorism after September 11. First, as mentioned in the previous section, before September 11, the main thrust of the United Nations' counter-terrorism work came in the form of international conventions. The two most important conventions are the International Convention for the Suppression of Terrorist Bombings (1997) and the International Convention for the Suppression of the Financing of Terrorism (1999). There was a clear increase in the number of countries that ratified these two conventions after 11 September 2001. As of June 2001, 59 states had signed the convention on terrorist bombings.[25] Moreover, before 11 September 2001, a total of 27 countries had ratified the convention; afterward, an additional 118 states ratified the convention, bringing the total to 145 as of December 2005 (Table 1).[26] As of June 2001, 43 states had signed the convention on terrorist financing.[27] In addition, before 11 September 2001, only 4 countries had ratified the convention, while 147 countries have done so since the attacks.[28]

Second, when it comes to the work of the Security Council, we can also see that there is a difference in the number of terrorism-related resolutions passed before and after 11 September 2001. Before September 11, the Security Council had passed a total of 13 resolutions classified as dealing with terrorism, according to the United Nations (Table 2), an average of about one a year.[29] However, there has been a marked increase in terrorism-related resolutions passed by the Security Council since 11 September 2001; by the end of 2005, it had passed 20 resolutions, an average of 4 to 5 resolutions a year (Table 2).

Third, another interesting aspect of the terrorism-related resolutions passed before and after 11 September 2001 is the voting record. Eight of the 13 resolutions passed before September 11 were passed unanimously,

[25] UN Association of the United States of America, "Informs, Peace & Security," accessed at the website of UNA-USA at http://www.unausa.org/site/pp.asp?c=fvKRI8MPJpF&b=379693, 14 March 2006.

[26] Through e-mail correspondence, the UN Treaty Section provided the dates that all 145 countries ratified the International Convention for the Suppression of Terrorist Bombings (1997).

[27] UN Association of the United States of America, "Informs, Peace & Security."

[28] Through e-mail correspondence, the UN Treaty Section provided the dates that all 151 countries ratified the International Convention for the Suppression of the Financing of Terrorism (1999).

[29] As reported by the United Nations, "UN Action Against Terrorism, Action by the Security Council," accessed on the website of the United Nations at http://www.un.org/terrorism/sc.htm, 6 February 2006.

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TABLE 1

Number of Countries that Ratified the International Convention for the Suppression of Terrorist Bombings (1997) and the International Convention for the Suppression of the Financing of Terrorism (1999)

Year	*Convention for the Suppression of Terrorist Bombings*	*Convention for the Suppression of the Financing of Terrorism*
1998	1	—
1999	7	—
2000	9	2
1/1–9/11 2001	10	2
9/12–12/31 2001	19	12
2002	32	48
2003	37	43
2004	17	25
2005	13	17
1/1–3/13 2006	—	2
Total	145	151

Source: UN Treaty Collection website, http://untreaty.un.org/English/treaty.asp and e-mail correspondence (11 April 2006) from the UN Treaty Section, providing information on when countries ratified the International Convention for the Suppression of Terrorist Bombings (1997) and the International Convention for the Suppression of the Financing of Terrorism (1999).

while five had no-votes or countries abstaining from voting (Resolution 687 on Kuwait and four resolutions relating to implementing sanctions). The resolution encountering the most resistance (five abstained: Cape Verde, China, India, Morocco, and Zimbabwe) was Resolution 748 (1992) implementing sanctions on Libya. After 11 September 2001, 19 of 20 resolutions were passed unanimously. Only Syria voted no on Resolution 1450 (2002), condemning the terrorist bomb attack in Kikambala, Kenya and the attempted missile attack on the airliner departing Mombasa, Kenya, 28 November 2002.

Qualitative Changes

The general thrust of action at the UN Security Council, as well as more-particular data, supports the notion that the Security Council's response to September 11 was significant, but it is also important to explore the gravity and quality of actions taken at the UN. For the purpose of evaluating the quality of the resolutions, we have classified them into four types: general/technical; response to terror act; response to terror act and imposing sanctions; and terrorism a minor issue. The first group, general/technical, includes resolutions that deal with terrorism in broad or technical terms and do not necessarily refer to a specific event. Two of the 13 resolutions passed before September 11 deal with terrorism in more-general/technical terms (Table 3): Resolution 635, and Resolution 1269 (1999) on international co-

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TABLE 2

Comparison of UN Security Council Resolutions on Terrorism Passed Before and After 11 September 2001

Security Council Resolutions on Terrorism	*Before September 11*	*After September 11*
Total	13	20
Average per year	~1	4–5
General/technical	2 (15,5%)	11 (55%)[a]
Terrorism a minor issue	2 (15,5%)	—
Response to terror act	3 (23%)	11 (55%)[a]
Response to terror act and sanctions	6 (46%)	1 (5%)[a]
Unanimous vote	8 (62%)	19 (95%)
No-vote or abstained vote	5 (38%)	1 (5%)

Source: The United Nations, "UN Action Against Terrorism, Action by the Security Council," accessed at http://www.un.org/terrorism/sc.htm, 6 February 2006.

[a]Some of the post–September 11 resolutions have been classified as more than one type (see Table 4). This explains why the classification of the post–September 11 resolutions adds up to more than 100%.

operation in the fight against terrorism. In Resolution 1269 (1999), the Security Council

> *Unequivocally condemns* all acts, methods and practices of terrorism as criminal and unjustifiable, regardless of their motivation, in all their forms and manifestations, wherever and by whomever committed, in particular those which would threaten international peace and security; [and] ... *Calls upon* all States to implement fully the international anti-terrorist conventions to which they are parties, *encourages* all States to consider as a matter of priority adhering to those to which they are not parties, and *encourages also* the speedy adoption of the pending conventions.[30]

Of the post–September 11 resolutions, we classified over half of the resolutions (11 of 20) as dealing with terrorism in general terms (Table 4).[31] These include Resolution 1373 (2001), which established the CTC, Resolution 1535 (2004) which revitalized the CTC, Resolution 1540 (2004) on non-proliferation of nuclear, chemical, and biological weapons, and Resolution 1624 (2005) concerning the incitement of terrorist acts.

The second and third types include resolutions that condemn specific terrorist attacks. The third type, response to terror acts and sanctions, includes those resolutions that impose sanctions on countries or regimes found to have assisted terrorist networks. Most of the resolutions passed before 11 September 2001 (9 of 13) fit into these two groups (Table 3), dealing with and reacting to international terrorist actions such as the Pan Am Flight 103 bomb-

[30] UN Security Council, S/ RES 1269 (1999), accessed on the website of the United Nations at http://daccessdds.un.org/doc/UNDOC/GEN/N99/303/92/PDF/N9930392.pdf?OpenElement, 16 March 2006, 2.

[31] Some post–September 11 resolutions have been classified as belonging to two different groups because of the content of the resolution.

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TABLE 3

UN Security Council Resolutions on Terrorism before 11 September 2001

Year	*Resolution*	*Content*	*Vote*	*Type*
1989	635	On making of plastic or sheet explosives for the purpose of detection	Unanimously	Technical
1991	687	On restoration of the sovereignty, independence, and territorial integrity of Kuwait	12 to 1 (Cuba)[a]	Terrorism minor issue
1992	731	On the destruction of Pan American flight 103 and Union des transports aeriens flight 772	Unanimously	Response to terror act
1992	748	On sanctions against the Libyan Arab Jamahiriya	10 to 0[b]	Response to terror act, sanctions
1993	883	On sanctions against the Libyan Arab Jamahiriya in connection with Libyan non-compliance with Security Council Resolutions 731 (1992) and 748 (1992)	11 to 0[c]	Response to terror act, sanctions
1996	1044	Calling upon Sudan to extradite to Ethiopia the three suspects wanted in connection with the assassination attempt against President Mubarak of Egypt	Unanimously	Response to terror act
1996	1054	On sanctions against Sudan in connection with non-compliance with Security Council Resolution 1044 (1996)	13 to 0[d]	Response to terror act, sanctions
1998	1189	Concerning the terrorist bomb attacks of 7 August 1998 in Kenya and Tanzania	Unanimously	Response to terror act
1998	1214	On the situation in Afghanistan	Unanimously	Terrorism minor issue
1999	1267	On measures against the Taliban	Unanimously	Response to terror act, sanctions
1999	1269	On international cooperation in the fight against terrorism	Unanimously	General
2000	1333	On measures against the Taliban	13 to 0[e]	Response to terror act, sanctions
2001	1363	On the establishment of a mechanism to monitor the implementation of measures imposed by Resolutions 1267 (1999) and 1333 (2000)	Unanimously	Response to terror act, sanctions

Source: The United Nations, "UN Action Against Terrorism, Action by the Security Council," accessed at http://www.un.org/terrorism/sc.htm, 6 February 2006. S/RES/883 was not on the website, but has been added by the authors.

[a]Two abstaining (Ecuador, Yemen).

[b]Five abstaining (Cape Verde, China, India, Morocco, Zimbabwe).

[c]Four abstaining (China, Djibouti, Morocco, Pakistan).

[d]Two abstaining (China, USSR).

[e]Two abstaining (China, Malaysia).

ing in 1988 and the terrorist attacks in Kenya and Tanzania in 1996. When countries supporting or harboring terrorists and their organizations have failed to comply with international pressure, the Security Council has taken the next step and enforced sanctions; six resolutions are classified as the third type (Table 3). Since September 11, about half (11 of 20 resolutions) have been in response to specific terror acts (Table 4), including the bomb attacks in Kenya, Madrid, and London. Only one resolution involving sanctions has been passed since 11 September 2001—Resolution 1526 (2004), which extends and

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TABLE 4

UN Security Council Resolutions on Terrorism after 11 September 2001

Year	*Resolution*	*Content*	*Vote*	*Type*
2001	1368	Condemning the terrorist attacks of 11 September 2001 in New York, Washington DC, and Pennsylvania, United States of America	Unanimously	Response to terror act
2001	1373	On threats to international peace and security caused by terrorist acts	Unanimously	General/response to terror act
2001	1377	On the adoption of declaration on the global effort to combat terrorism	Unanimously	General/response to terror act
2002	1438	On the bomb attacks in Bali (Indonesia)	Unanimously	Response to terror act
2002	1440	On condemning the act of taking hostages in Moscow, Russian Federation, on 23 October 2002	Unanimously	Response to terror act
2002	1450	Condemning the terrorist bomb attack in Kikambala, Kenya, and the attempted missile attack on the airliner departing Mombasa, Kenya, 28 November 2002	14 to 1 (Syria)	Response to terror act
2002	1452	On the implementation of measures imposed by para. 4 (b) of Resolution 1267 (1999) and para. 1 and 2 (a) of Resolution 1390 (2002)	Unanimously	General
2003	1455	On improving of implementation of measures imposed by para. 4(b) of Resolution 1267 (1999), para. 8(c) of resolution 1333 (2000), and para. 1 and 2 of Resolution 1390 (2002)	Unanimously	General
2003	1456	On combating terrorism	Unanimously	General
2003	1465	On the bomb attack in Bogota, Colombia	Unanimously	Response to terror act
2003	1516	On the bomb attacks in Istanbul, Turkey, on 15 and 20 November 2003	Unanimously	Response to terror act
2004	1526	Threats to international peace and security caused by terrorist acts and measures against al Qaeda and the Taliban	Unanimously	General/response to terror act, sanctions
2004	1530	On the bomb attacks in Madrid, Spain, on 11 March 2004	Unanimously	Response to terror act
2004	1535	On the revitalization of the Security Council Committee established pursuant to Resolution 1373 (2001) concerning counter-terrorism	Unanimously	General
2004	1540	On non-proliferation of nuclear, chemical, and biological weapons	Unanimously	General
2004	1566	On international cooperation in the fight against terrorism	Unanimously	General
2005	1611	On bomb attacks in London on 7 July 2005	Unanimously	Response to terror act
2005	1617	On international cooperation in the fight against terrorism	Unanimously	General
2005	1618	On continued terrorist attacks in Iraq	Unanimously	Response to terror act
2005	1624	On threats to international peace and security	Unanimously	General

Source: The United Nations, "UN Action Against Terrorism, Action by the Security Council," accessed at http://www.un.org/terrorism/sc.htm, 6 February 2006. S/RES/1625, which the UN website has classified as dealing with terrorism but which, in fact, deals with the general situation in Africa, has not been included by the authors.

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expands the sanctions against the Taliban and al Qaeda organizations (Table 4). The fourth type involves resolutions in which terrorism is only a minor issue. There were two such resolutions before and none after September 11 (Table 3): Resolution 687 (1991), which dealt with the aftermath of the first Gulf war, and Resolution 1214 (1998), which related to the general situation in Afghanistan.

To sum up, it can be argued that the "quality" of the resolutions has changed as well. Prior to September 11, only 2 of 13 resolutions (15 percent) dealt with terrorism in more general terms. Since September 11, over half of the resolutions (11 of 20) have dealt with terrorism in general terms (Table 2). This suggests that the fight against terrorism has had a much more central role on the agenda of the Security Council since September 11, while terrorism was dealt with in a more ad-hoc fashion prior to the attacks on the United States. Furthermore, one may, at first glance, argue that the majority of the resolutions before and after September 11 have been reactive in nature (69 percent of resolutions before September 11 and 55 percent of those after), in response to specific terrorist acts (Table 2).

However, there are major differences: before September 11, only a few terrorist attacks were actually referred to the Council. In the last five years, however, almost all terrorist attacks have been referred to and condemned by the Council (Bali, Kenya, Bogota, Istanbul, Madrid, and London). While the member states were rather selective about which cases were handled by the Council prior to September 11, it seems that the Council has been more even-handed and inclusive since September 11. Another distinct difference is the apparent consensus in the Council. Prior to September 11, only 8 of 13 resolutions (62 percent) were adopted unanimously. After September 11, 19 of 20 resolutions (95 percent) were adopted unanimously. How long this consensus will endure is an open question, but the efforts of the Security Council since September 11 have been much more organized, concerted, and prominent than they were in the past. We can say that while the early efforts were more event-driven and dealt with terrorism as a low-level issue, since September 11 they have been much more comprehensive and central. The post–September 11 resolutions carry more significance and clout, frame the work of the UN organs on terrorism, and provide a framework and guide for action for most of the member states of the UN.[32]

Tools

Not only has the nature of the response to terrorism changed as a result of 11 September 2001, the tools available in the fight against terrorism have changed as well. Before September 11, sanctions remained, in practice, the ultimate tool available to the Security Council. The Security Council used

[32] Rostow, "Before and After," 487.

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sanctions against terrorism three times in the 1990s, against Libya, Sudan, and Afghanistan. It has not used sanctions in response to terrorism since September 11, except for the continuing sanction regime against Osama Bin Laden, members of the al Qaeda and Taliban organizations, and associated individuals and groups.[33] The United States was the driving force in all three instances in the 1990s. The improved climate after the end of the Cold War, as well as the changes in transnational terrorism, created an "opening" in the Security Council and made it possible to use sanctions as a tool against states supporting terrorism networks. As Oudraat points out, "The sanctions regimes of the 1990s helped to consolidate a growing international consensus that saw terrorism as an illegitimate activity that needed to be countered through collective international actions. Sanctions therefore helped to change the public attitudes of states toward terrorism."[34]

While it is known that sanctions may not significantly change the behavior of the target state, Luck maintains that the "expectation, rather, was that such unprecedented steps by the Council would help further delegitimize the state sponsoring terrorist groups and activities. The sanctions were seen, moreover, as a deterrent, as a means of signaling the Council's newfound determination to take a firm stand against terrorism."[35] In the three cases in which sanctions have been used, the results have been uneven, and in the cases in which we may deem the sanctions a success (Libya and Sudan), it is very hard to tell whether the sanctions actually worked or whether other factors played a role. Moreover, the degree to which a state values what it has to give up also makes a significant difference when it comes to the success of sanctions. Libya and Sudan were not asked to relinquish anything central to their power; by contrast, the Taliban depended on Bin Laden for military, financial, and political support to retain power in Afghanistan.[36]

Sanctions have not been used in response to terrorism since 11 September 2001, except for the continuing sanctions against the Taliban and al Qaeda, and there are several reasons for this. First, after the attacks on the United States, the fight against transnational terrorism took on a completely new form and became the "war on terrorism," involving various forms of the use of force. Resolution 1368 "reaffirmed the inherent right of self-defense in accordance with Article 51 of the UN Charter" and gave the U.S. operations in Afghanistan legitimacy and broader international support. The U.S. unilateral and military action in Afghanistan and Iraq eclipsed sanctions in some measure. Second, sanctions work best when applied against a state, thereby allowing

[33] The 1267 Committee oversees the implementation of these sanctions and is assisted by a monitoring team, set up by Resolution 1526, which analyzes countries' reports and conducts field visits, identifying for the Committee any gaps in implementation of the sanctions.

[34] Oudraat, "The Role of the Security Council," 157–158.

[35] Luck, "Tackling Terrorism," 94.

[36] Ibid., 95; R. Harrison Wagner, "Economic Interdependence, Bargaining, Power, and Political Influence," *International Organization* 42 (Summer 1988): 461–483.

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other states to sever diplomatic, economic, military, and other links. Sanctions against transnational terrorist networks, such as al Qaeda, tend to be less effective, because the "target" is constantly moving or hiding. Third, in this new world of transnational terrorism, efforts aimed at strengthening each state's means to fight terrorism (such as the work of the CTC) may be more effective than sanctions. In other words, the use of the military option in Afghanistan and Iraq, the general difficulty in achieving consensus on the use of sanctions, and the work of the CTC have made the employment of sanctions less beneficial since September 11. However, sanctions could still be a significant and useful tool in the future.[37] Oudraat points out that "sanctions regimes paved the way for a military approach to terrorism."[38] It is therefore difficult to say how effective sanctions will be in the future against transnational terrorism. What is certain is that the international community, post–September 11, has utilized tools in addition to sanctions, namely the use of military force as well as general and financial counter-terrorism obligations monitored by the CTC.

Compliance

Another before/after factor to compare is compliance with UN mandates by member states. Unfortunately, there is no easy comparison, because compliance was not requested prior to September 11. No resolution demanded that states take action to address terrorism, except for sanctions resolutions, but that is the rub. Prior to September 11, compliance was a minor issue. After September 11, this clearly changed. The sweeping and binding commitment imposed by Resolution 1373 on the member states, and the monitoring mechanism (the CTC), represent a creative and unique, and some may say intrusive, way to fight terrorism. By early 2004, a consensus had developed in the Security Council on the need to strengthen the CTC by providing additional resources and authority. That led the Security Council to adopt Resolution 1535 in March 2004. Resolution 1535 established a new Counter-Terrorism Executive Directorate (CTED), which greatly increased the Committee's professional staffing and improved its capacity to support member state implementation. The CTED has been fully staffed since September 2005, and was confirmed operational in December 2005.[39] In 2005, the Committee began a series of visits to

[37] Daniel Benjamin notes that "although the problem of the new terrorism is principally one of non-state actors, the ability to condemn and sanction could be an important one in the future" in "Terrorism and International Organizations," accessed on the website of United Nations and Global Security, An Initiative of the United Nations Foundation at http://www.un-globalsecurity.org/pdf/Benjamin_paper_terrorism.pdf, 16 March 2006, 4.

[38] Oudraat, "The Role of the Security Council," 158.

[39] UN Security Council Counter-Terrorism Committee, "About Us, Working Committee Methods," accessed on the website of the United Nations at http://www.un.org/sc/ctc/workingmethods.shtml, 14 March 2006.

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member states in order to work directly with officials in the capitals and provide better technical assistance for the implementation of Resolutions 1373 (2001) and 1624 (2005). In 2005, the Committee and CTED visited Morocco, Kenya, Albania, Thailand, and Algeria; in 2006, visits included Tanzania, the Former Yugoslav Republic of Macedonia, and the Philippines.[40]

The CTC/CTED is the UN's first institutionalized attempt at a coordinated and global counter-terrorism scheme.[41] The 13 counter-terrorism conventions serve as legal platforms to harmonize national practices, but carry no compliance or enforcement mechanism. Though the CTC cannot punish member states, the transparency of the process encourages compliance with Resolution 1373. According to the report *An Action Agenda For Enhancing the United Nations Program on Counter-Terrorism*, the CTC has been successful because it "has established legitimacy and political authority for the global counter-terrorism effort,... it has promoted the creation of specialized systems for coordinating global efforts to combat terrorist threats... [and it] has helped to develop and strengthen international norms. The CTC has played a role in creating and sustaining international momentum to strengthen counter-terrorism efforts."[42]

All 191 member states submitted first-round reports to the CTC, in which they laid out their compliance with Resolution 1373. A state's report is first considered by one of the three subcommittees, and later by the whole CTC. The CTED can advise the Committee on "technical aspects of States' reports, including criminal, financial, customs, immigration and extradition law and practice; police and law enforcement issues; and illegal arms trafficking."[43] After analyzing the report, the Committee can send a letter requesting further information. The state then has 90 days to respond with a new report. As of January 2005, "the CTC has received more than 550 reports from states, making it the depository of what one observer termed 'probably the largest body of information about worldwide counterterrorism capacity.'"[44] While there is no easy basis for comparison to the pre–September 11 compliance record on terrorism, the post–September 11 record has been mixed. According to David Cortright, only a few dozen states have fully complied with Resolution 1373, and most of these are advanced industrialized nations that have

[40] Ibid.

[41] The CTC draws its mandate from Resolution 1373 (2001). However, Resolution 1624 (2005), which deals with the issue of incitement to commit acts of terrorism, extended the Committee's mandate to include the monitoring of its implementation according to the UN Security Council Counter-Terrorism Committee, "Mandate," accessed on the website of the United Nations at http://www.un.org/sc/ctc/mandate.shtml, 25 June 2006.

[42] Cortright, Lopez, Millar, and Gerber, *An Action Agenda*, 8, 12.

[43] UN Security Council Counter-Terrorism Committee, "Documents, Country Reports," accessed on the website of the United Nations at http://www.un.org/sc/ctc/countryreports.shtml, 14 March 2006.

[44] David Cortright, "Can the UN Battle Terrorism Effectively?" *USA Today* Magazine, January 2005, 2.

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the capacity and resources to deal effectively with the financing, travel, and supply of terrorist organizations.[45] About 60 states are in transition; "these countries are in the process of introducing the necessary legislative, administrative, and regularity changes for countering international terrorism."[46] About 70 states are "sympathetic to the CTC but face difficulties ranging from armed conflict to extreme poverty and are unable to prioritize counter-terrorism concerns."[47] The last group, of about 20 states, has some capacity to comply but has chosen not to; "some of these countries are on the front lines of the battle against terrorism, and their inaction weakens the overall UN effort."[48]

Moreover, when it comes to compliance, another of the Security Council's committees on counter-terrorism, the 1540 Committee (on nuclear non-proliferation) reports that as of 30 May 2006, "129 States and one organization had submitted first national reports to the Committee; and 62 Member States had yet to submit their first report. In response to the Committee's examination of the first national reports, 83 States had provided additional information. Facilitating reporting and the conduct of outreach activities to promote reporting remained among the top priorities of the Committee's future work."[49]

The third Security Council counter-terrorism committee, the 1267 Committee (dealing with al Qaeda, the Taliban, and associated individuals and groups) was established in 1999 and is the only one that lends itself to a before-and-after comparison. The 1267 Committee has a monitoring group that has published several reports, but member states were not required to submit national reports until 2002.[50] As of March 2006, 45 states had not yet reported.[51]

[45] David Cortright, "Terrorism Beyond the State: Dilemmas and Solutions," accessed on the website of United Nations and Global Security, An Initiative of the United Nations Foundation at http://www.un-globalsecurity.org/pdf/cortright.pdf, 16 March 2006, 4.

[46] Ibid.

[47] Ibid.

[48] Ibid.

[49] United Nations Security Council, "Press Release Sc/8730, Security Council Reviews Work Of Committees On Nuclear Non-Proliferation, Counter-Terrorism, Al-Qaida And Taliban: Main Issues Discussed Include Reporting Systems, Coordination Among Committees, Cooperation With Regional Organizations, May 30, 2006," accessed on the website of the United Nations at http://www.un.org/News/Press/docs/2006/sc8730.doc.htm, 1 July 2006.

[50] United Nations Security Council, "Letter dated 14 February 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities addressed to the President of the Security Council containing the SECOND REPORT of the MONITORING TEAM pursuant to resolution 1526 (2004)," accessed on the website of the United Nations at http://daccessdds.un.org/doc/UNDOC/GEN/N05/240/73/PDF/N0524073.pdf?OpenElement, 25 June 2006, 14.

[51] United Nations Security Council, "S/2006/154, Letter dated 8 March 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities addressed to the President of the Security Council containing the FOURTH REPORT of the MONITORING TEAM pursuant to resolution 1526 (2004)," accessed on the website of the United Nations at http://daccessdds.un.org/doc/UNDOC/GEN/N06/230/45/PDF/N0623045.pdf?OpenElement, 25 June 2006, 37.

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However, the monitoring team asserted that while it is difficult to make a "thorough independent assessment of compliance by all 191 Member States" and while many states "failed to include sufficient detail to permit a through assessment of their sanction regimes," the compliance so far provides "encouraging news about the status of global implementation."[52]

Challenges

The foregoing discussion argues that the UN Security Council's response to terrorism became much stronger after September 11. However, the work of the United Nations as a whole, and of the Security Council in particular, has been hampered by several issues. These include the lack of a universal definition of terrorism, lack of enforcement mechanisms, concerns about American dominance, human rights issues, and the importance of root causes.

First, one of the foremost issues related to the United Nations' response to terrorism is the inability of the member states to agree on a definition of terrorism. The member states seem quite content to live with the ambiguity, which allows them to define terrorism in ways that suit their policy objectives. Indeed, the main struggle has been over whether terrorism should sometimes be defined as a political movement. Some are in favor of exempting from the definition of terrorism "all activities done in resistance to 'foreign occupation' and activities by those 'engaged in the struggle for national liberation.'"[53] However, the lack of a definition does not seem to have significantly inhibited the Security Council or the CTC in their practical work. The work of the General Assembly toward a single comprehensive convention on terrorism in place of the existing conventions and protocols will most likely necessitate a consensus among the member states as to what constitutes international terrorism.

The concern about the lack of a universal definition of terrorism is therefore more a normative, moral, and human rights concern: In his 2006 report, the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism writes that "calls by the international community to combat terrorism, without defining the term, can be understood as leaving it to individual States to define what is meant by the term. This carries the potential for unintended human rights abuses and even the deliberate misuse of the term."[54] The closest the Council comes to a definition may be the wording in Resolution 1269 (1999): the Security Council "unequivocally condemns all acts, methods and practices

[52] Security Council, "Letter dated 14 February 2005," 14.

[53] Rostow, "Before and After," 480.

[54] Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, "Report on Promotion and Protection of Human Rights," E/CN.4/2006/98, 28 December 2005, accessed on the website of the United Nations at http://daccessdds.un.org/doc/UNDOC/GEN/G05/168/84/PDF/G0516884.pdf?OpenElement, 16 March 2006, 9.

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of terrorism as criminal and unjustifiable, regardless of their motivation, in all their forms and manifestations, wherever and by whomever committed, in particular those which could threaten international peace and security," which still leaves plenty of leeway for national interpretations.[55] The practice that has been employed is the "use of counter-terrorism conventions as a trigger for determining what conduct is to be proscribed in the fight against terrorism."[56] Nevertheless, the United Nations community needs to agree on a universal definition of terrorism in order to protect human rights and develop a comprehensive counter-terrorism strategy, and because a "lack of agreement on a clear and well-known definition undermines the normative and moral stance against terrorism and has stained the United Nations image."[57]

Second, the issue of enforcement is central to the success of the Security Council's response to transnational terrorism. The implementation of Resolution 1373 is partly hampered by the CTC's lack of resources and capabilities to undertake comprehensive monitoring.[58] Moreover, it does not have any enforcement mechanisms with which to "punish" those countries that are not complying with the obligations of 1373. Some of these countries may not be able to divert scarce resources to counter-terrorism efforts, while others may not want to; the latter are the states most likely to harbor or assist terrorist networks.

Third, the United States has been the driving force in getting the Security Council to play a more active role in combating global terrorism. For the other members of the Council, the preponderance of American power may lead to difficult choices of whether to maximize the fight against terrorism or attempt to balance against U.S. power and dominance.[59] This problem may have been reflected, in some measure, in the Security Council split over whether to use force in Iraq in 2003.

Fourth, many experts believe that if the Security Council is to be effective in its counter-terrorism efforts, either the Security Council as a whole, or powerful states such as the United States, will have to take an active role in solving some long-standing regional conflicts. "The conventional wisdom

[55] UN Security Council, S/RES 1269 (1999), 2.

[56] Special Rapporteur, "Report on Promotion and Protection of Human Rights," 10.

[57] United Nations, "A More Secure World: Our Shared Responsibility, Report of the High-level Panel on Threats, Challenges and Changes, 2004," accessed on the website of the United Nations at http://www.un.org/secureworld/report2.pdf, 15 November 2006, 51.

[58] Eric Rosand, "Security Council Resolution 1373, the Counter-Terrorism Committee, and the Fight against Terrorism," *The American Journal of International Law* 97 (April 2003): 338–340. Rosand suggests that the issue of financial and human resources, the lack of resources to provide direct assistance, the absence of an agreed-upon definition of terrorism, and the issue of the protection of human rights are still difficult areas for the CTC.

[59] The position that the UN Security Council is used by other states to balance against the superpower is argued by, among others, Erik Voeten, "The Political Origins of the UN Security Council's Ability to Legitimize the Use of Force," *International Organization* 59 (Summer 2005): 527–557.

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concludes that the international community will not succeed in this area [terrorism] until the conflicts in the Middle East and over Kashmir come to and end."[60]

Fifth, the possibility of the United Nations taking on a larger and more forceful role in the fight against terrorism worries some communities, such as human rights groups, humanitarian organizations, and disarmament advocates. The fear is that counter-terrorism efforts can be used by states to clamp down on dissidents. Counter-terrorism cooperation may provide authoritarian regimes with cover for repressing their already-limited commitments to human rights and the rule of law. Since 11 September 2001, the General Assembly has passed three resolutions regarding "protecting human rights and fundamental freedoms while countering terrorism," in 2002, 2003, and 2004.[61] In Resolution 59/191, the General Assembly "*reaffirms* that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law."[62] The Secretary-General has submitted three reports on "protecting human rights and fundamental freedoms while countering terrorism," in 2003, 2004, and 2005. In his latest report, the Secretary-General points out that the Commission on Human Rights appointed a special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in July 2005. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has also printed a "digest of jurisprudence of the UN and regional organizations on the protection of human rights while countering terrorism,"[63] and the OHCHR will continue and deepen its contact with the CTC and CTED.[64] In conclusion, the Secretary-General writes that he, "the High Commissioner for Human Rights, and many other human rights experts continue to express concern that many counter-terrorism measures are infringing on human rights and fundamental freedoms."[65]

Sixth, this paper has mainly dealt with the tactical response of the Security Council to the terrorist threat, but many experts, as well as world leaders,

[60] Rostow, "Before and After," 489.

[61] These resolutions are A/RES/57/219, A/RES/58/187, and A/RES/59/191, accessed at http://www.un.org/terrorism/res.htm, 7 June 2007.

[62] General Assembly, A/RES/59/191 (2005), accessed on the website of the United Nations at http://daccessdds.un.org/doc/UNDOC/GEN/N04/487/72/PDF/N0448772.pdf?OpenElement, 17 March 2006, 2.

[63] "Its aim is to assist policy makers and other concerned parties in developing a vision of counter-terrorism strategies that are fully respectful of human rights," according to OHCHR, "Digest of Jurisprudence of the UN and Regional Organizations on the Protection of Human Rights While Countering Terrorism," accessed on the OHCHR website at http://www.ohchr.org/english/about/publications/docs/digest.doc, 15 March 2006, 3.

[64] UN Secretary-General, "Report: Protecting Human Rights and Fundamental Freedoms while Countering Terrorism," A/60/374, accessed on the website of the United Nations at http://daccessdds.un.org/doc/UNDOC/GEN/N05/520/75/PDF/N0552075.pdf?OpenElement, 16 March 2006, 3.

[65] Ibid., 8.

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believe that this response will not be successful as long as the root causes of terrorism are not tackled. "Analogous to the emphasis on economic development and democracy as ways to prevent armed conflict, the desire to deal with root causes is based on the assumption that if specific parts of the world were better places, then terrorism would not take root."[66] Secretary-General Kofi Annan stated in 2002 that terrorism is "a weapon for alienated, desperate people, and often a product of despair. If human beings everywhere are given real hope of achieving self-respect and a decent life by peaceful methods, terrorists will become much harder to recruit."[67] Others have pointed out that "continued promotion of human rights, humanitarian assistance, and economic development can be a major UN contribution to eliminating terrorism."[68]

Reflecting some broadly held views, Daniel Benjamin lists the following root causes that have to be addressed: authoritarian rule, the disintegration of public education, the culture of incitement, economic stagnation, and the demographic explosion.[69] Another concern is that violent internal and international conflicts can constitute fertile ground for international terrorism: "Prolonged unresolved conflicts in particular often create conditions conducive to exploitation by terrorists and as such must not be allowed to fester, however intractable they might seem."[70] The United Nations has an extensive history of preventing and resolving armed conflicts through its peacebuilding and peacekeeping capacities; for example, the special representatives and envoys of the Secretary-General have been instrumental in facilitating peace agreements in 13 conflicts since 2001.[71] Furthermore, "Human Security Report 2005 identified a dramatic 40 percent reduction in armed conflicts since 1992 and attributed the achievement in part to increased United Nations peacekeeping, prevention and peacebuilding activities." While it is true that the Security Council and peacebuilding and peacekeeping operations can play an important role in the fight against terrorism, one should be mindful of the fact that preventing terrorism is, at best, only a positive by-product of these operations; building and sustaining the peace should always be the main priority.

[66] Boulden and Weiss, "Whither Terrorism," 12–13.

[67] United Nations, "Press Release SG/SM/8105, SC/7277, 18 January 2002," accessed on the website of the United Nations at http://www.un.org/News/Press/docs/2002/sgsm8105.doc.htm, 17 March 2006.

[68] James Sutterlin, *The United Nations and the Maintenance of International Security, A Challenge to Be Met* (Westport, CT and London: Praeger, 2003), 112.

[69] Benjamin, "Terrorism and International Organizations," 2.

[70] UN Secretary-General, "United Against Terrorism: Recommendation for a Global Counter-terrorism Strategy," A/60/825, 27 April 2006, accessed on the website of the United Nations at http://www.un.org/unitingagainstterrorism/sg-terrorism-2may06.pdf, 15 November 2006, 6.

[71] United Nations, "UN Action to Counter Terrorism, Taking Action: UN Measures to Counter Terrorism," accessed on the website of the United Nations at http://www.un.org/terrorism/strategy/forthepress.html, 15 November 2006.

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Conclusion

The Security Council's response to terrorism since 11 September 2001 has been in a different league than its response prior to the attacks. The acknowledgement of self-defense as a state's legitimate response to terrorism, the sweeping obligations put on all member states by Resolution 1373, and the formation of and response to the CTC are all firsts in UN history. The importance of counter-terrorism is also manifested by the sheer volume of resolutions passed: 20 in all since 11 September 2001, an average of 4 to 5 a year. There is also a new sense of consensus and determination in the Security Council when it comes to tackling the issue of terrorism (the lack of a definition notwithstanding), illustrated by the fact that all but one of the resolutions were passed unanimously. The nature of the resolutions has also changed; there is now much more attention given to how to fight terrorism in general than to condemning specific acts. One may argue that the Security Council post–September 11 has had more of a strategy or concerted approach, which includes political condemnation of most major terrorist attacks, collective counter-terrorism obligations, and monitoring and assistance in improving states' counter-terrorism capabilities.[72] Yet the persistence of the serious conceptual, institutional, and political constraints described in this article suggests that progress will only be made incrementally and within limits.[73] Indeed, as the UN Working Group on the United Nations and Terrorism pointed out, the UN's political and institutional capacity to contribute to counter-terrorism has progressed in positive and innovative ways, but the UN is also limited in that it is not "well placed to play an active operational role in efforts to suppress terrorist groups, to preempt specific terrorist strikes, or to develop dedicated intelligence-gathering capacities."[74]

At the outset, we noted that we would elaborate upon the question of the importance to the United States of the United Nations. On that score, opinion has been strongly divided in the United States. In fact, in the year following the Iraq war, just 55 percent of Americans had a favorable view of the UN, which was the lowest recorded in 14 years of Pew Research surveys.[75] Some detractors argue that the UN is ineffective and expensive,[76] that it is an anti-American vessel, composed of countries that seek to undermine U.S.

[72] This is partly argued by Eric Rosand in "The Security Council's Efforts to Monitor the Implementation of Al Qaeda/Taliban Sanctions," *The American Journal of International Law* 98 (October 2004): 745.

[73] Luck, "Another Belligerent," 106.

[74] United Nations, "Report of the Policy Working Group on the United Nations and Terrorism," A/57/273, S/2002/875, 6 August 2002, accessed on the website of the United Nations at http://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/512/97/img/N0251297.pdf?OpenElement, 18 March 2006, 5.

[75] The Pew Research Center for the People and the Press, "A Year After the Iraq War: Mistrust of America in Europe Even Higher, Muslim Anger Persists," 16 March 2004, accessed on the Pew Research Center website at http://people-press.org/reports/pdf/206.pdf, 15 May 2006, 3.

[76] On the criticisms of the United Nations and on why it does matter, see Kim R. Holmes, "Why the United Nations Matters to U.S. Foreign Policy, Remarks before the Baltimore Council on Foreign

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interests and to contain American power, and that it is used for purposes of "soft balancing" against the United States in lieu of balancing by military power.[77] In this view, Washington should not support the UN significantly, should view it in a wary light, should remove funding from certain organs within it (such as the highly controversial Human Rights Council), or should withdraw from the UN altogether. At a minimum, detractors would counsel that the United States should steadfastly pursue its national interests within the context of the UN, rather than allow the organization to circumscribe its autonomy and power. The appointment of John Bolton as U.S. Ambassador to the United Nations pleased these detractors because of his frequent criticisms of the world body and reflected the George W. Bush administration's view that the United Nations was in serious need of reform, and was too often problematic for U.S. interests.[78] Indeed, Secretary of State Condoleezza Rice pointed to the need to reform the UN, whose efficacy she viewed with skepticism, in defending Bolton's controversial appointment.[79]

By contrast, proponents of the United Nations, with respect to the American role, believe that it furthers the interests of the United States. In this view, it provides, among other things, a forum within which the United States can cultivate and benefit from allies. It performs a variety of functions across issue areas that add predictability to world politics, from which a hegemon can gain. Moreover, it adds credibility to what otherwise might be viewed as unabashed American unilateralism.

This debate obviously will not be settled here. It certainly is true that the United Nations has posed some serious problems for American interests. Moreover, numerous problems, as laid out in this paper, have arisen in the UN's effort to deal with terrorism, which have been problematic from Washington's standpoint. This is especially the case with regard to the challenges of seeking compliance on UN actions on terrorism.[80] However, on the whole, the UN

Affairs World Trade Center, Baltimore, Maryland December 6, 2004," accessed on the website of the U.S. Department of State at http://www.state.gov/p/io/rls/rm/2004/39496.htm, 7 June 2007.

[77] On soft balancing, see Robert A. Pape, "Soft Balancing against the United States," *International Security* 30 (Summer 2005). Also, T.V. Paul, "Soft Balancing in the Age of U.S. Primacy," *International Security* 30 (Summer 2005): 58–59.

[78] On the American perception of the need for reform, see United States Congress, House Committee on International Relations, Henry J. Hyde, *United Nations Reform Act of 2005* (Washington DC: U.S. Government Printing Office, 2005). On the clash between the United States and the United Nations on a range of issues, see the website of the Council on Foreign Relations at http://www.cfr.org/publication/7541/feinstein.html, accessed 7 June 2007.

[79] Condoleezza Rice, "Remarks to the Annual Convention of the American Society of Newspaper Editors, Washington, DC, April 15, 2005," accessed on the website of the U.S. State Department at http://www.state.gov/secretary/rm/2005/44728.htm, 7 June 2007; "Rice Urges Changes at U.N.," *The Washington Post*, 10 April 2005, A5.

[80] On these difficulties, see Congressional hearings, "The United Nations and the Fight Against Terrorism," accessed on the website of the House of Representatives at http://commdocs.house.gov/committees/intlrel/hfa20061.000/hfa20061_0f.htm, 30 May 2007.

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Security Council's response to September 11 has benefited the United States in several ways, as imperfect as this response has been. First, at the broadest level, transnational terrorists have targeted the United States more than any other state and it would likely be the target of any future, major attack by al Qaeda. The greater the number of countries that are enlisted in the war on terrorism, the better off is the United States. The UN allowed the United States to enlist the support of many states in a forum that these states considered legitimate. The UN offered the institutional apparatus, the political cover for states that were sensitive to being seen as too pro-American, and the credibility that facilitated such efforts. It conferred legitimacy on anti-terrorist efforts in a manner that the United States could not have done on its own, because many states saw the UN as at least attempting to represent broader international views.

Second, the UN allowed the United States an institutional forum in which to gain adherents. Illuminating this point, Secretary of State Condoleezza Rice identified the UN as a place that enhanced the ability of the United States to mobilize other actors, such as in the war on terrorism, despite her calls for UN reform in general.[81]

Third, Resolution 1368 created the basis for a new, more involved Security Council focused on terrorism and reflected an unprecedented assertion by the Council that self-defense is a legitimate response to terrorism. This is exactly what the United States wanted in the wake of September 11 when it sought to communicate the importance of dealing with terrorism before it actually manifested itself.

Fourth, for its part, Resolution 1373 imposed far-reaching, creative, and unique obligations on states to fight terrorism, in a variety of different arenas. Such broad action would have been very hard for the United States to spearhead and coordinate outside the confines of the UN. The transaction costs would have been far higher at the bilateral level, the coordination more difficult, and the ability to gain such commitments in the first place more limited. Fifth, the quantity and quality of resolutions passed by the Council against terrorism increased significantly after September 11. In virtually all cases, the United States supported and sought such a heightened stand. Sixth, UN action, including sanctions, has probably sent a message to state sponsors of terrorism. The chance that they will be punished for such support has increased. The Council has developed a consensus that such action is unacceptable, even as it debates how to respond to these provocations.

Seventh, the UN role in counter-terrorism has been important in another respect as well. Even before September 11, the Bush administration had a reputation for unilateralism, which was heightened by the invasion of Iraq. It is fair to say that the multilateral response to terrorism within the context of the UN contrasted sharply and positively with such perceived unilateralism. It

[81] Condoleezza Rice, "Remarks to the Annual Convention of the American Society of Newspaper Editors," accessed 30 May 2007.

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made it unfair to label the war on terrorism as simply an American unilateral military response. Indeed, as Luck points out, "Whatever the unilateral impulses of the George W. Bush administration, its efforts to link multilateral diplomacy through the UN and regional institutions with the unilateral exercise of U.S. power since the events of September 11, 2001, represent, if anything, one of Washington's more vigorous attempts to involve the Security Council in counterterrorism."[82]*

[82] Luck, "Tackling Terrorism," 93.

* We are thankful for the useful and insightful comments and suggestions from the anonymous reviewers and the editors. Any mistakes are the responsibility of the authors alone.

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Sustaining Authoritarianism in the Middle East and North Africa

STEPHEN J. KING

Why the persistence of authoritarianism in the Arab world? Leading approaches to this question highlight the importance of institutional arrangements for choices made by political activists and elites that served to perpetuate authoritarianism.[1] These approaches tend to emphasize how incumbent elites utilize institutional arrangements to disrupt the formation of coalitions that threaten their hold on power. Incumbent strategies include blunt repression by highly developed state security forces, winner-take-all electoral systems that hinder the formation of pluralism from a single-party base, state limiting of opposition political party activities and funding, and divide-and-rule tactics that favor moderate groups and produce impotent forms of multiparty politics. By highlighting the importance of various institutional arrangements for choices made by political activists and elites in the Arab world, all of these explanations move beyond much of the general literature on democratic transitions, which highlights the autonomy of actor choices during critical junctures and minimizes the analytical weight

[1] Marsha Pripstein Posusney and Michele Penner Angrist, eds., *Authoritarianism in the Middle East: Regimes and Resistance* (Boulder, CO: Lynne Rienner Publishers, 2005). I will not address cultural explanations that have already been the topic of much discussion. For explanations of Middle East authoritarianism based on the underlying culture in the region, see Hisham Sharabi, *Neopatriarchy* (Oxford, UK: Oxford University Press, 1988); Daniel Pipes, *In the Path of God: Islam and Political Power* (New York: Basic Books, 1983). Two recent empirical studies found that the cultural argument based on Islam did not hold. See Steven Fish, "Islam and Authoritarianism," *World Politics* 55 (October 2002): 4–37; Mark Tessler, "Islam and Democracy in the Middle East: The Impact of Religious Orientations on Attitudes towards Democracy in Four Arab Countries," *Comparative Politics* 34 (April 2002): 337–354.

STEPHEN J. KING is an associate professor of govenment at Georgetown University. He is the author of *Liberalization Against Democracy: The Local Politics of Economic Reform in Tunisia* (Bloomington: Indiana University Press, 2003) and various articles on the politics of economic reform in the Middle East and North Africa.

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attributed to socioeconomic structures, international factors, and institutional context.[2]

This article extends these approaches to the persistence of authoritarianism in the Arab world in a new direction. Instead of focusing on how incumbent elites utilized institutions and deployed divide-and-rule tactics to keep the opposition off balance, it examines how regime elites created political support during a period of dynamic economic and political change. The article argues that economic crisis and international pressures for liberalization and greater participation led regime incumbents to initiate political openings in Egypt, Tunisia, Syria, and Algeria during the third wave of democracy that swept Eastern Europe, Africa, Asia, and the Middle East in the 1980s and 1990s. However, the character and consequences of economic reform, combined with the capacities of state parties, provided leaders in these four Middle East and North Africa (MENA) countries with the resources to resist democratization and transform authoritarian rule. Economic reforms undertaken during political openings created and then favored a rent-seeking urban bourgeoisie and landed elite with no interest in democracy or political participation. Workers and peasants hurt materially and organizationally by the economic reforms bargained from a weakened position. At the level of formal political institutions, they became increasingly marginalized. The capacities of state parties, which absorbed the increased participation of the bourgeoisie and that of most of the increasingly disgruntled less-affluent citizenry, facilitated the transformation of populist authoritarian regimes into elitist crony capitalist forms of authoritarian rule.[3]

In the MENA, transitions began within an international context that favored liberalization and greater participation. The volatile transition period started a process of group and leadership interactions in which societal interests and institutional capacities played an important part. Changes in social structure and economic reform programs, which benefited some groups and hurt others, constrained and shaped the preferences of actors in state and society who were bargaining for new institutional arrangements during the critical juncture of transitions from authoritarian rule. In sum, in analytical terms, the international context interacted with domestic structural forces and

[2] Here the classic work is the multi-authored study led by Philippe Schmitter and Guillermo O'Donnell, *Transitions from Authoritarian Rule.* See Guillermo O'Donnell and Philippe Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracy* (Baltimore, MD: Johns Hopkins University Press, 1986), 4, 5. The authors do note that loosened structural parameters can be quickly tightened at the end of transition periods, which can culminate in either democratic or authoritarian outcomes.

[3] On state parties, see Stephan Haggard and Robert Kaufman, *The Political Economy of Democratic Transitions* (Princeton, NJ: Princeton University Press, 1995); and Barbara Geddes "Authoritarian Breakdown: Empirical Test of a Game Theoretic Argument" (paper presented at the American Political Science Association, Atlanta, GA, 1999); Jason Brownlee, "Ruling Parties and Durable Authoritarianism" (working paper 23, Center on Democracy, Development and the Rule of Law 2003).

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institutional legacies to drive outcomes unfavorable to democracy. Paying closer attention to these factors provides insight into how the choices actors make during transitions are conditioned by structural constraints.

The argument will be presented in three parts. The first section places the MENA transition experience within a global context. The second section highlights how economic liberalization helped rent-seeking economic elites and drove the coalition formation of transformed authoritarian rule in Egypt, Tunisia, Syria, and Algeria. Due to the character and consequences of economic reform, regime incumbents were able to jettison their populist social base of support and replace it with a new distributional coalition of economic elites that fortified the authoritarian regimes' ability to govern. The third section tracks the rather rapid evolution or devolution of multiparty experiments into revived single-party rule. The focus is on the increasing support of the bourgeoisie and large landowners for the state parties in the region during the experiments with multiparty competition, along with the inability of workers and peasants to drive the formation of viable opposition parties during the political transition period. By way of conclusion, this article's argument is placed within the broader literature on persistent authoritarianism in the Arab world.

Failed Democracy and New Forms of Authoritarian Rule

In terms of economic and political transformation, Egypt, Syria, Tunisia, and Algeria followed a pattern similar to other countries of the developing world. Statist/socialist economic policies, import-substituting industrialization that created state-owned enterprises, and land reform benefiting peasants dominated until a gradual shift toward economic liberalization began in the 1970s or 1980s. The state also provided other benefits, including subsidized food, education, and healthcare, and guaranteed-employment schemes. Politics during the Arab populist/socialist era was dominated by unchallenged single-party rule bolstered by the military. These regimes initially aimed to consolidate power against the traditional upper class by co-opting the middle and lower strata.[4]

Equity, redistribution, and socialism were all tenets of the Arab single-party regimes to varying degrees. Syria's Baath Party, Gamal Abdel Nasser's Arab Socialist Union, and Algeria's Front de Libération Nationale (FLN) were more radical ideologically than Tunisia's state party, even during its years as the Socialist Destour, a name that was changed to simply the Destour Party when the regime shifted gradually to economic liberalism in 1970. In the case of Syria and Egypt, the regimes confiscated the property of their traditional upper classes in rural and urban areas. While discussions of nationalization of Tunisian property occurred at high levels in Tunisia, they were never carried

[4] Raymond Hinnebusch, "The Politics of Economic Liberalization: Comparing Egypt and Syria" in Hassan Hakimian and Ziba Moshaver, eds., *The State and Global Change: The Political Economy of Transition in the Middle East and North Africa* (Richmond, Surrey, UK: Curzon Press, 2001), 112.

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out. In Algeria, over 130 years of French colonization had largely eliminated the Algerian propertied classes before the war of independence. In all four cases, at the outset of populist/socialist Arab authoritarianism, workers, peasants, the lower middle-classes, and the military formed the backbone of the state coalition.

The crisis of socialism and statism began in the Middle East and North Africa in the 1970s and 1980s just as it did elsewhere in the world, culminating in the collapse of the Eastern bloc in 1989. Facing a mounting debt crisis, which reflected international trends, in the early 1970s and 1980s, Tunisia, Egypt, and Syria all sought to reintegrate their private sectors into the economic arena, while still maintaining state-dominated economies. Algeria began that process in the mid-1980s. This period of gradual economic liberalization was followed by the acceleration of market-oriented reforms in the form of the privatization of state-owned assets and land in the 1990s.

Politically, MENA countries also followed global trends. It is often forgotten that in or before the optimistic early 1990s, several Arab regimes, like their counterparts in Eastern Europe, Africa, and Asia, engaged in serious political liberalization with rumblings of democratization.[5] Egypt, which began holding regular multiparty legislative elections in 1976, appeared to be seriously moving toward the rule of law, liberalization, and democratization in 1990, when President Hosni Mubarak was forced by Egypt's High Constitutional Court to dissolve a parliament that the court ruled had been elected under an unconstitutional electoral law designed by the regime and the state party. Algeria's state party was defeated, first in local elections in 1990 and subsequently in legislative elections in 1991/1992, by an Islamic party, the Front for Islamic Salvation (FIS), before the military moved in to annul the results, thereby setting off a civil war from which the country is just now emerging. Building on an aborted multiparty experiment in 1981, Tunisia introduced multiparty legislative elections in 1989, along with a national pact to guide the transition to democracy after President Ben Ali took power in a constitutional coup in 1987. Nominally competitive presidential elections were inaugurated in the mid 1990s. In order to reflect Ben Ali's new platform of democratic reform, the President changed the name of the political party, which had led the country to independence, to the Democratic Constitutional Rally (RCD). The national pact pledged to separate the RCD from the state in order to provide more vitality to multiparty elections. In 1990, Syria held elections to its People's Assembly. While only tame parties were allowed, independent candidates increased their share of seats.

[5] Samuel Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman: University of Oklahoma Press, 1991); Vickie Langohr, "Too Much Civil Society, Too Little Politics: Egypt and Liberalizing Arab Regimes," *Comparative Politics* 36 (January 2004): 181–204; Michael Hudson, "After the Gulf War: Prospects for Democratization in the Arab World," *Middle East Journal* 45 (Summer 1991): 407–426.

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The democratic impulse evident in Egypt, Tunisia, Algeria, and Syria in the late 1980s and 1990s failed, instead creating a new authoritarianism in place of the old, characterized by a façade of multiparty politics, increased presidentialism, a new coalitional base in the rent-seeking urban bourgeoisie and rural elite, and political deliberalization. Why? Certainly cultural dispositions and other region-specific factors played important parts in these outcomes. Analysts speculate about the commitment of Arabs and Muslims to democracy. The coercive apparatuses of these states are powerful and efficient repressive mechanisms, and a high number of regional conflicts have contributed to an ethos of militarism in the MENA. While these factors provide hurdles to democratic success, they do not tell the whole story. Other factors contributed to the dampening of the democratic impulse in the region.

In certain MENA cases, the international context interacted with domestic structural forces in a manner that drove non-democratic outcomes. International pressure for economic liberalization and domestic economic crises led leaders to accelerate market-oriented reforms and initiate transitions from authoritarian rule in Egypt, Tunisia, Syria, and Algeria. Globalization and external debt led these countries to implement structural adjustment programs under the auspices of the World Bank and the International Monetary Fund, in every case but Syria, that came with conditions requiring the privatization of state assets and other liberalization measures often referred to as "the Washington consensus."[6] Globalization and the implementation of Washington consensus economic policy reforms are the starting point for understanding economic change in the MENA and also a critical point of entry into understanding political change.[7]

During transitions, actors in state and society bargain and negotiate to determine the outcome of political and socioeconomic reforms. In the MENA context, economic reforms dramatically altered domestic social structure by empowering some social groups and weakening others. Negotiations went on among state officials, among social groups, and between the state and its coalition, and the state and groups outside the ruling coalition. The negotiating process was a reflection of the structural power relationship between the parties and the preferences of the actors.[8] In the cases reviewed here, economic reforms increased the structural power of economic elites and produced incentives for them to favor authoritarianism. In a related manner, the privatization of state assets provided the resources for regime incumbents to generate a new social base of support for transformed authoritarian rule among the rent-

[6] John Williamson, "What Washington Means By Policy Reform" in John Williamson ed., *Latin American Adjustment: How Much Has Happened* (Washington DC: World Bank, 1990), 7–20.

[7] Clement M. Henry and Robert Springborg, *Globalization and the Politics of Development in the Middle East* (Cambridge, UK: Cambridge University Press, 2001), 14–21.

[8] I. William Zartman, "The State on a Tightrope: Institutionalization and Negotiation" in Dirk Vandewalle, ed., *North Africa: Development and Reform in a Changing Global Economy* (New York: St. Martin's Press, 1996), 230.

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seeking urban bourgeoisie and landed elites. Decreasing structural power caused by economic reforms and a changed international context produced greater incentives for workers and peasants to favor democracy but fewer resources with which to advocate for it.

The present analysis uses a structured, focused comparison of Egypt, Tunisia, Syria, and Algeria to test and illustrate my argument. Several considerations went into the selection of these cases. As former populist/socialist authoritarian regimes, the four countries allow the analyst to capitalize on the advantages of a similar case studies approach.[9] The regional focus presented in this study also contributes to adding under-represented states to important debates in comparative politics about regime change. There are also obviously important contemporary reasons to analyze new political and economic arrangements in Egypt, Syria, Tunisia, and Algeria. Egypt is the most powerful, populous, and regionally influential Arab state. Algeria is the most populous and powerful North African state. Syria has long been the Arab world's leading front-line state in the Arab–Israeli conflict. Tunisia, although small, has served as the region's leader in terms of economic reform. A focused comparison of all four countries will provide insight into a crucial contemporary question: why the failure of democracy in the Arab world?

From Arab Socialism to Crony Capitalism

This section describes the maturation of new dominant coalitions in Egypt, Tunisia, Syria, and Algeria. It highlights how liberalizing regimes jettisoned workers and peasants for a new coalitional base of support in the rent-seeking urban bourgeoisie and rural elite. The crony capitalism that emerged in these countries is being partly obscured by authoritarian strengthening and deliberalization, which began shortly after the political openings of the early 1990s. Thus, changes in domestic social structure favored transformed authoritarian rule, but not democratic outcomes.

The disintegration of Arab populism/socialism was a slow and gradual process that began over 30 years ago. An analyst writing in the early 1980s suggested for the case of Egypt that at some point, the populist coalition of workers and peasants would be abandoned for a new dominant coalition that comprised economic and state party elites, "some amalgam of *munfatihun* [middle men in Anwar Sadat's 1970s gradual economic opening], private manufacturers, commercial farmers, and former state capitalists [that] may one day constitute [a new dominant class in Egypt], at which point the state may become its creature."[10] The full emergence of this new dominant class has been

[9] Adam Przeworski and Henry Teune, *The Logic of Comparative Social Inquiry* (Malabar, FL: Robert E. Krieger Publishing, 1970), 33.

[10] John Waterbury, *The Egypt of Nasser and Sadat: The Political Economy of Two Regimes* (Princeton, NJ: Princeton University Press, 1983), 432.

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facilitated by the character and consequences of the privatization of state-owned enterprises and land in Egypt, Tunisia, Syria, and Algeria, which began seriously in the 1990s.

Egypt's economic reforms clearly favor rent-seekers from dominant economic groups. For Nader Fergany, lead author of the landmark Arab Human Development Report (2002),[11] the privatization of public enterprises in Egypt has fostered crony capitalism and social volatility caused by a lack of distributive justice. Both are detrimental to Egypt's so-called gradual democratic transition:

> Egypt's privatization and structural adjustment programs ... have led to a distinctly Egyptian brand of crony capitalism. The operative factor is a very sinister cohabitation between power and capital. The structural adjustment program is helping to reconstruct a kind of society where a small number of people own the lion's share of assets .... Privatization in effect has meant replacing the government monopoly with a private monopoly, as with the mobile phone business. The middle class has been shrinking while there has been an enlargement of the super-rich. State-owned enterprises have been sold to a minority of very rich people. The record of private sector enterprises creating jobs is very poor. We are not reaping the benefits of an energetic bourgeoisie, what we have is a parasitical, comprador class. ... The consequences will be no less than catastrophic. This society is a candidate for a difficult period of intense, violent social conflict, and the kind of government we have will not do.[12]

Egypt's crony capitalists are demonstrably linked to powerful political forces, including military leaders, and President Mubarak and his family, the key member of which is the older son, Ala. According to one prominent study, during Egyptian privatization, Mubarak gained direct or indirect control over the flow of resources, such that his dominance of the country's key economic elite is unchallenged. In addition, the Egyptian President has convincingly presented to outsiders the accomplishments of crony capitalism as manifestations of Egypt's economic liberalization.[13]

Numerous studies from Egypt's social science research centers and the Arabic press have also confirmed the emergence of an elite distributional coalition focused on the rents generated by market-oriented reforms. Hassan Tawfiq Ibrahim argued that privatization led to state bureaucrats colluding with businessmen to purchase state-owned enterprises at lower than market

[11] United Nations Developmet Program Arab Fund for Economic and Social Development, *Arab Human Development Report, 2002.* The *Arab Human Development Report*, jointly sponsored by the Regional Bureau for Arab States of the United Nations Development Program and the Arab Fund for Economic and Social Development (Kuwait) and first published in 2002, has now become a series of four reports.

[12] In an interview with Nader Fergany, lead author of the *Arab Human Development Report, 2002-2005.*

[13] Henry and Springborg, *Globalization and the Politics of Development*, 154.

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prices.[14] Ahmad al-Sayyid al-Najjar identified several companies that were sold by the government at prices so low that at times the price paid was lower than the value of the land on which the companies stood. These companies included an Egyptian state-run Pepsi Cola company, al-Nasr Boilers, al-Ahram Beverage, Asyut Cement, and the Meridian Hotel. All of these companies were profitable, according to the author, at the time that they were sold.[15]

The 2004 Human Development Report in Egypt unveiled more cases of rampant rent seeking. The report declared that the state sold profitable companies and kept failing ones. The central bureau of accounting, according to this report, was excluded from the privatization process, and Parliament and its councils were not consulted on the selling procedures. The overall process lacked transparency. In one case described in the report, an investor bought Qaha Company for Preserved Food with a loan backed by fake guarantees and then kept the company even after failing to make installment payments.[16]

The Egyptian privatization policy of selling assets to single individuals (anchor investors) or small groups of investors led to monopolies or near-monopolies in many sectors of the increasingly marketized economy. These included cement, iron, food, telecommunications, and beverages.[17] For example, Ahmad 'Izz, a powerful businessman and a personal friend of President Mubarak, controlled more than 50 percent of the iron market; Ahmat Bahjat controlled more than 31 percent of the television market after such purchases.[18] Evolving monopolies and corruption have been reported in specific companies, such as the Iron and Steel company, Telemisr,[19] Nasir for Iron Pipes,[20] The Egyptian Company for Chemicals and Metals Trade, and the Holding Company of Tourism, Habitation, and Cinema.[21]

According to the opposition organization, the Free Egyptians, the President's son, Gamal Mubarak, has been linked to numerous rent-seeking arrangements via several organizations: the policies committee, the Future Generation Foundation, the Social Fund for Development, the U.S.–Egypt

[14] Hasanayin Tawfiq Ibrahim, *Al-Iqtisad al-siyasi lil-ilsah al-iqtisadi* (Cairo: Markaz al-Dirasat al Siyasiyya wa-al-Istratijiyya, 1999), 93, 94.

[15] Ahmad al-Sayyid al-Najjar, *al-iqtisad al-Misri: min tajrubat yulyu ila namudhaj al-mustaqbal* (Cairo: Markaz al-Dirasat al-Siyasiyya wa-al-Istratijiyya, 2002), 147–162.

[16] Layla al-Khawaja, ed., *Taqrir al-tanmiya al-bashariyya fi Misr* (Cairo: Markaz Dirasat wa-Buhuth al-Duwal al-Namiya, 2004).

[17] Mahmud 'Abd Al-Fadli, quoted in "Qa'imat al-ihtikarat fi Misr: bay' al-sharikat li-mustathmir wahid yu'addi ila al-ihtikar," *al-Ahali*, 28 February 2001.

[18] Ibid. "Hikayat Ahmad 'Izz ma'a sharikat al-Dikhila lil-Hadid wa-al-Sulb: fada'ih al-fasad wa-al-ihtikar fi sina'at al-sulb," *al-Ahali*, 2 August 2000.

[19] "Ummal sharikat Tilimisr yasrukhun: man yunqidhuna min ghul al-khaskhasa?" *al-Ahali*, 16 May 2001.

[20] "Al-Nasr lil-Mawasir al-Sulb shahid àayan àla fasad al-khaskhasa," *al-Ahali*, 18 July 2001.

[21] "Fi al-Misriyya li-Tijarat al-Kimawiyyat wa-al-Ma'adin: al-Sharika al-Qabida lil-Tijara tarfud sarf mustahaqqat 2000 'amil kharaju lil-mas'ash al-mubbakir," *al-Ahali*, 6 November 2002.

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Business Council, and the Egyptian Center for Economic Studies.[22] Prominent business partners of the Mubaraks in these endeavors include Ahmed Bahgat, Ahmed El Bardai, Ahmed Zayat, Ahmed Izz, Galal Abdel Maksoud El Zorba, Hosna Rachid, Hossam H. Badrawi, Ibrahim El Alfi, Mahamed Farid Khamis, Mahamed L. Mansour, Mohammed Abou-El Enein, Raouf Ghabbour, Sarwat Sabet Bassily, Yaseen I. Loutfy Mansour, Yasser El Mallawany, and Youssef Loutfy Mansour. The President's family gained stakes in several products, franchises, and companies, including Sofitel, Hundai, Nissan, KFC, Skoda, Stella Beer, Marlboro, and numerous others. The Mubaraks' partners acquired the most lucrative franchises and companies by utilizing supporting loans from state-associated banks, attained without proper collateral.

Land market liberalization in Egypt had the same asset-concentrating and rent-seeking impact on Egypt as the privatization of state-owned enterprises, if not worse. The upward distribution of land makes especially poor economic sense, considering that small holdings are widely considered to be superior to large holdings in terms of both efficiency and equity.[23] Recent market reforms in Egypt have dismantled Nasser's 1952 land reform. Nasser's policies had granted quasi-property rights to over one million families—secure tenancy at fixed rents on properties taken over from the country's largest landowners. Rent ceilings and secure tenancy had led over time to the stagnation of agricultural production. Rents remained fixed much too far below market prices, and frequently the peasants did not have the resources to increase production. The solution to the conflict between tenants and landowners could have been resolved in a number of ways, including efforts to bolster small-scale production in a market-oriented environment. In the end, however, the new laws governing agrarian production dramatically favored the interests of owners over those of tenants. Tenants were evicted en masse, and compensation to them amounted to only one fifth of the sum considered during the debates on the subject. In addition to these dynamics on rent ceilings, the state chose to sell much of publicly owned land to the highest bidder, leading to a steep drop in the proportion of small landowners.[24] By the end of the 1990s, 7 percent of the population owned 60 percent of the agricultural land.[25]

In Tunisia, the new elite distributional or rent-seeking coalition emerged in full force shortly after President Ben Ali took power in 1987. Marketization

[22] Accessed at http://Free.Egyptians.4t.com/, July 2004.

[23] Michael Lipton, *Why Poor People Stay Poor: Urban Bias in World Development* (Cambridge, MA: Harvard University Press, 1977); Albert Berry and William Cline, *Agrarian Structure and Productivity in Developing Countries* (Baltimore, MD: Johns Hopkins University Press, 1979). Klaus Deininger, "Land Policy and Administration: Lessons Learned and New Challenges for the Bank's Agenda" (preliminary version of a paper for the World Bank Land Policy and Administration Thematic Group, 2000).

[24] M. Riad El-Ghonemy, "The Political Economy of Market-Based Land Reform" (Popular Coalition/UNRISD monograph, 4 June 1999), 14.

[25] Stephen King, *Liberalization Against Democracy: The Local Politics of Economic Reform in Tunisia* (Bloomington, Indiana University Press, 2003), 126.

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generated new rents in Tunisia as it did in Egypt, and the process there also began with the President's family. The family of the President's wife, in addition to other well-placed families, is a leading party in privatization deals.[26] The Central Bank of Tunisia, as was the case in Egypt, has been utilized to help create the new distributional coalition of a rent-seeking bourgeoisie and landed elites.[27] A referendum issued by the bank in November of 1997 allowed all other banks to give loans to businessmen willing to buy state-owned enterprises without appropriate guarantees. This referendum encouraged dozens of businessmen affiliated with government officials to buy state-owned enterprises as a way to acquire wealth without improving output. Many bought the enterprises only to lay off their workers and sell their machinery and land. This was the case with the factory of Littihad Bijmal, the Tismuk Company, and the Sutabakis Company. Most of the loans to purchase these and other state-owned enterprises were not paid back. Due to these lax rules and regulations, the banks get only a 20 percent return on their loans.[28]

The pattern of an upward distribution of land seen in Egypt's economic reform program has also been the case in Tunisia. Since 1985, Tunisian leaders have been engaged in an agrarian counter-reform in which the state is transferring over 600,000 hectares of the country's best land to a rural elite.[29] With the support of World Bank agricultural sector loans, state land held in cooperatives is being privatized in 25- to 40-year leases at rates far lower than market prices, prior to a future move toward outright ownership.[30] In addition, over 2.7 million hectares of communal land is being privatized in Tunisia, with negative consequences for the small peasantry that already had insecure access to land and employment.[31]

Economic liberalization in Algeria created rent-seeking opportunities for elites. The coalition supporting liberalization in the 1980s was an isolated group of technocrats surrounding the President, Chadli Benjedid. A severe economic crisis in October of 1988, linked partly to a drop in oil prices and the pain of economic liberalization policies, prompted civilian disturbances that were violently put down by the military. Benjedid responded with political liberalization measures and more market-oriented reforms. After the start of the civil war against Islamists in 1992, military leaders were preoccupied with security issues and probably divided on issues of economic liberalization. However,

[26] Personal communication with a Tunisian opposition journalist, July 2004. On the condition of anonymity, officials in the Tunisian U.S. embassy verify that elite corruption and the lack of transparency is the biggest criticism about the country's structural adjustment program.

[27] Henry and Springbord, *Globalization and the Politics of Development*.

[28] Muhammad Furati, "Al-khawsasa wa-in'ikasatiha al-ijtima'iyya," *al-Mawqif*, 17 October 2003.

[29] King, *Liberalization Against Democracy*, 35–37.

[30] World Bank, *Republic of Tunisia: Growth Policies and Poverty Alleviation* (Washington DC: World Bank, 1995), 26.

[31] Ibid., 6, 7.

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by 1995, under President Liamine Zeroual, Prime Minister Ahmed Ouyahia launched a series of deep market reforms.[32]

A pro-liberalization distributional coalition of government and private-sector elites has been formed in Algeria, where a liberalized economy is operating through a circulation of rent among the military, a deficient public sector, and a largely commercial private sector.[33] The President's family has been implicated in one major privatization scandal involving the Orascom telecommunications company.[34] Privatization also appears to be fostering de-industrialization in Algeria: the private sector is not taking up the slack for the decrease in production of state enterprises in hydrocarbons, textiles, and food processing.[35]

In the agricultural arena, property rights reform has been slow. However, in the last 10 years, there has been movement toward the privatization of state land, which is the best land in the country. The state land was either confiscated from French settlers or nationalized from the old landowning elite. Opponents fear that the land being sold is falling into the hands of secret and powerful pressure groups, with the end result of upward land redistribution.[36]

Under new land laws, some peasants who enjoyed usufruct rights to public agricultural land lost them, and the land was given back to its pre-revolutionary owners. For example, in the district of al-Shalf, the peasants complained that a 1995 land law broke their rental leases and dissolved their agricultural investments in order to give the land back to large landowners who did not support or participate in the liberation war. This led to sit-in protests by peasants in the district.[37] In a general fashion, loans, input, and service support have been provided to large landowners to assist in participation in export markets, while no such assistance has been made available to the small peasantry.[38]

Despite an ingrained populist ideology linking state elites and the masses and a more thorough decapitation of the country's traditional economic elite, Syria has not been immune to the general tendency in the Middle East toward increasing marketization and an alliance between former state capitalists, the bourgeoisie, and landed elites, who benefit from a new context of rent seeking

[32] Brad Dillman, "The Political Economy of Structural Adjustment in Tunisia and Algeria," *The Journal of North African Studies* 3 (Autumn 1998): 1–24.

[33] Brad Dillman, *State and Private Sector in Algeria: The Politics of Rent-Seeking and Failed Development* (Boulder, CO: Westview Press, 2000), 3.

[34] Accessed at http://www.al-fadjr.com/article.php?code=895, July 2005.

[35] Henry and Springbord, *Globalization and the Politics of Development*, 119.

[36] Salima Terranti, "Privatization of Agricultural Land in Algeria: More than Ten Years of Silent Debates" (presentation to Pan-African Program on Land and Resource Rights workshop, Cape Town, South African, 5–7 May, 2003).

[37] A. Sharifa, "Fallahu al-Shalf yutalibun bi-milkiyyat al-'aradi allati yastaghillunaha," *al-Fajr*, 21 June 2004.

[38] "Al-multaqa al-jihawi lil-ghuraf al-filahiyya li-wilayat gharb sa'ida," *al-Fajr*, 15 March 2004; Layla Maslub, "'Uyahya yurid tajmid al-birnamij al-watani lil-tanmiya al-filahiyya," *al-Fajr*, 4 October 2004.

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created by the privatization of state assets. The economic liberalization impulse in the country can be traced back to the rise to power of Hafiz al-Assad in 1970. Assad pursued policies more friendly to the private sector than had been the case during the consolidation of populism.[39] This first Syrian *infitah* encouraged private investment mainly in the commercial and service sectors.[40] A second *infitah*, launched in the late 1980s, aimed to mobilize private-sector money for investment in Syria.

The policies of economic liberalization in the 1970s and 1980s led to both an embourgeoisement of the state elite and rent-seeking activities of private entrepreneurs.[41] Beginning with a 1991 law, the Syrian state aimed to increase direct foreign and private investment in industry in an even more pronounced fashion. The law also waived import duties and taxes, permitted repatriation of profits, and allowed investors to import hard currency outside state channels.[42] In more recent years, there has been an attempt to establish a private banking sector.

Although at a slower rate than in the other three countries, there are clear signs that Syria is transforming the social base of regime support to an elite distributional coalition. Joint public–private companies have been formed in tourism and agriculture. The assets are jointly owned, and management in these companies has been turned over to private hands, without state regulation or oversight.[43] Perhaps more crucially, in a communally divided society dominated by a minority sect, "business partnerships have developed between the [Sunni] private sector and the children of the [Alawi] political elite, who increasingly felt themselves, as their fathers never had, to be part of the bourgeoisie and who were confident that economic liberalization would work for them."[44]

Some local voices in Syria who oppose the policy fear that privatization is about to accelerate dramatically. For them, the investment legislation of 1991 will ultimately be the harbinger of a much greater elite claim on state assets. Privatization was slowed and even became retrenched at the end of the 1990s and early 2000s but seemed to be picking up steam again in 2004.[45] The government offered new public industries for sale: the Hamah Iron Company,

[39] Volker Perthes, "The Syrian Private Industrial and Commercial Sectors and the State," *International Journal of Middle East Studies* 24 (May 1992): 207–230.

[40] Ibid.

[41] Ibid.; Raymond Hinnebusch, "The Political Economy of Economic Liberalization in Syria," *International Journal of Middle East Studies* 27 (August 1995): 305–320.

[42] Raymond Hinnebusch, "The Politics of Economic Liberalization," *Third World Quarterly* 18 (June 2001): 249–265.

[43] Ibid., 134.

[44] Ibid., 133.

[45] Jihad As'ad Muhammad, "Halaqa jadida min musalsal al-khaskhasa al-hukumi," *Kassioun Weekly*, October 2004. Anthony Shadid "Syria Heralds Reforms, But Many Have Doubts," *The Washington Post*, 18 May 2005.

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the Shoes factory, the Tanning factory, the Syrian company for batteries and natural gas in Aleppo, and the Al-Ghab Sugar Factory. The lack of transparency in prior sales probably applied in these as well.[46] The Minister of Industry, Mohammad Safi Abu-Dan, announced that the support and development of the private sector in all economic activities was one of the most important goals of the 2005 five-year plan.[47]

Détente between the Sunni bourgeoisie and the Alawi state elite may spell even more danger for Syria's peasants. Recent agricultural policy in Syria reflects the growing power of an agricultural economic elite that is part of a distributive coalition linked to emerging market arrangements. The recent dispensation of state lands in Syria is striking in its bias toward rich farmers, particularly considering the current regime's traditional social base. The Syrian state has maintained control of significant amounts of (1958) expropriated land for direct operation by the state. These state lands are falling under the control of the rural elite.[48] Overall, in Syria there has been a rollback of agrarian reform.[49] In the early 1990s, the Syrian private sector controlled over 90 percent of agricultural production.[50]

The merger between the Alawi state and Syria's bourgeoisie in a rent-seeking alliance is well under way according to Volker Perthes, who divides the bourgeoisie in the country into four linked groups: the old bourgeoisie, the new industrialists, the state bourgeoisie, and the pure middlemen. The old bourgeoisie emerged from the landowning bureaucratic class of the late Ottoman period. This group's land and businesses were confiscated by the state after the 1963 Baath revolution. However, since that time, especially after Assad's 1970 coup, which tempered the most radical wing of the party, merchants and some industrialists from this group have partially regained resources and power. The new industrialists, according to Perthes, were not from old notable families but did engage in commerce and crafts before increasing their wealth and influence in the 1970s and 1980s by moving into industrial endeavors. The state bourgeoisie, composed of the upper strata of the bureaucracy, has utilized its political connections to gain personal wealth and economic power through public–private sector links. Finally, a group of pure middlemen, the new commercial class, comprises former small traders and employees who specialize in deals between the state and its suppliers in the private sector.[51] Writing in 1991,

[46] "Madha yahduth fi Suriyya: hal bada'a bay' iqtisadina fi al-mazad al-'alani?" *Kassioun Weekly*, August 2004.

[47] Mohammad Safi Abu-Dan, "Syrian Economics," *Tishreen Daily*, 27 October 2004.

[48] El-Ghonemy, "The Political Economy"; Hanna Batatu, *Syria's Peasantry, the Descendants of Its Lesser Rural Notables, and Their Politics* (Princeton, NJ: Princeton University Press, 1999).

[49] Joel Beinen, *Workers and Peasants in the Modern Middle East* (Cambridge, UK: Cambridge University Press, 2001), 145.

[50] Volker Perthes, "A Look at Syria's Upper Class: The Bourgeoisie and the Ba'th," *Middle East Report* 170 (May–June 1991): 31–37.

[51] Ibid.; Perthes, "The Syrian Private Industrial and Commercial Sectors."

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Perthes argued that a transforming state class built on joint ventures and accelerating privatization was on its way to fusing the four branches of the Syrian bourgeoisie into an authentic bourgeoisie owning the means of production.[52]

In sum, in Egypt, Tunisia, Algeria, and Syria, economic liberalization has generated new rents and has contributed to the formation of a new distributional coalition, composed of a rent-seeking bourgeoisie and landed elites, that supports the regime. Distributional coalitions have been transformed from the broad populist coalitions that sought rents created by protectionism, subsidies, and tariffs to the elite distributional coalitions of the more market-oriented environment that rely on rents generated by the privatization of state-owned enterprises and land privatization.

It should also be noted that privatization and the implementation of other economic reforms in the Middle East and North Africa have been facilitated by a harsh repression of political rights.[53] Eberhard Kienle argued that countries in the MENA turned away from press freedom and political rights in the 1990s in order to hide the corruption and rent seeking that characterized the implementation of market reforms.[54] Together, the strengthening of a new ruling coalition composed of former state capitalists and a rent-seeking urban and rural elite, along with deliberalization measures to conceal emerging forms of crony capitalism, bode ill for the development of competitive multiparty politics. Regime elites and outsiders often focus on the threat of illiberal Islamist opposition forces when pinpointing reasons for the closing down of political space. However, clearly there are alternative or associated explanations for the closing of political space in the 1990s.

Transformed State Parties and the Failure of Multiparty Politics

The distributional coalition of the rent-seeking urban bourgeoisie, former state capitalists, and rural elite described in the previous section matured during critical junctures in MENA countries when there were movements away from authoritarianism. The legacies of single-party political systems influenced the direction of experiments in competitive multiparty politics in the region. These state parties were utilized as mechanisms to regain elite consensus and to fashion a new ruling coalition when the old populist authoritarianism faltered severely and forces dictated change. The existing party structures proved a vehicle for new coalitions of rentiers to absorb political pressures for liberalization and democratization.

Economic elites who have been favored in government policy in Tunisia, Syria, Algeria, and Egypt have rallied to the ruling parties during the brief

[52] Perthes, "A Look at Syria's Upper Class."

[53] Timothy Mitchell, "Dreamland: the Neoliberalism of Your Desires," *Middle East Report* 210 (Spring 1999): 28–33.

[54] Eberhard Kienle, *A Grand Delusion: Democracy and Economic Reform in Egypt* (New York: I.B.Taurius, 2001), 156–170.

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period of political liberalization, multiparty politics, and subsequent deliberalization that has characterized politics in these countries since roughly 1990. In the earlier populist era, private-sector economic elites, to varying degrees, were the enemies of the regimes, while the state parties built their support around workers, peasants, and the lower middle classes. The traditional upper classes are now the targets of state economic reform policies. These economic elites are largely not interested in political transparency or democratization. The bourgeoisie and landed elite have not offered the support necessary for opposition groups to overcome regime efforts to control political openings that they initiated. State-sponsored development, in which the state provides opportunities for rent seeking and anticipates the needs of economic elites, is joined by the transformation of state parties into the vehicle of private-sector entrepreneurs and landed elites in a manner detrimental to the development of competitive multiparty politics.[55]

The losers in economic reform, workers and peasants, have increasingly good reason to be advocates of democratization, but they face the overwhelming power of a transformed ruling party, with all of its structural and strategic assets, and decreasing bargaining power caused by their loss of economic and organizational resources over the last two decades. Their choices have been either to accept their vastly diminished role in the coalition of the ruling party, which many will probably do, especially if one gives any credence to the results of recent elections, in order to get what little they still can from the state, turn to Islamists that threaten the system as a whole if especially aggrieved, or simply withdraw from politics. Overall, these dynamics reflect how leadership decisions and social structure mediated by dominant party structures interacted in a manner that dampened the force of participation unleashed by the political openings of the late 1980s and 1990s in Egypt, Tunisia, Syria, and Algeria.

Egypt

In Egypt, the property of landed elites and private-sector entrepreneurs was the target of Nasser's socialist revolution, whereas the state party, the Arab Socialist Union, built its coalitional support around workers and peasants. Sadat began the reversal of Nasser's social contract with the masses, but Egypt's economy was still heavily statist into the 1990s, when the privatization of state assets drove the full implementation of regime coalition switching. The bourgeoisie and landed elite in Egypt have rallied to the state party during the country's implementation of economic reform and so-called transition to democracy.[56] The number of businessmen in Parliament increased significantly during the 1980s and 1990s, and these new parliamentarians overwhelmingly support the long-dominant National Democratic Party (NDP). The electoral

[55] Eva Bellin, *Stalled Democracy* (Ithaca, NY: Cornell University Press, 2002).
[56] Eva Bellin, *Stalled Democracy*, 176–179.

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TABLE 1

Egyptian Legislative Elections

Party	*1984*	*1987*	*1990*	*1995*	*2000*	*2005*
National Democratic Party	390	348	360	417	388	311
Muslim Brotherhood	8	30	Boycott	1	17	88
New Wafd	50	35	Boycott	6	7	6
Socialist Labor Party	—	27	Boycott	—	—	—
Liberal Party	—	3	Boycott	1	1	0
Progressive Unionist Party	—	—	5	5	6	2
Arab Democratic Nasserist Party	—	—	—	—	2	0
Nasserists	—	—	—	—	5	—
Independents	—	—	79	13	16	24

Source: Dan Brumberg, "Liberalization Versus Democracy, Understanding Arab Political Reform," (working paper 37, Carnegie Endowment for International Peace, 2003); Economist Intelligence Unit Country Profile–Egypt 2006, 9.

laws of 1986 and 1990 allowed independent individuals, that is, those not affiliated with any political party, to run for elections. This law resulted in a number of prominent businessmen being elected to parliament as independents only to join the NDP after election.[57]

As an illustration of the bourgeoisie's rallying to the ruling party and reluctance to drive democratization, the Wafd political party, a revived political party that represented Egypt's bourgeoisie during the pre-Nasser liberal era, has been unable to garner much popular support, as the elections of the 1990s indicate (Table 1), whereas many businessmen offered their support to the NDP. To strengthen democratic prospects in Egypt, the opposition Wafd, as the prospective second party in an emerging liberal democracy, needed the material and organizational support of Egypt's important businessmen, not the NDP, which was determined to control the political opening it had initiated.

Influential labor- and peasant-based political parties are struggling to develop in Egypt while the state party shifts its allegiance to economic elites. During the economic liberalization period, peasants have lost representation in Parliament, in the political and administrative structures that make and implement agricultural policy, and in local politics, while the state has advanced the interests of large landowners and promoted their increasing involvement in the NDP.[58] Workers, who are losing jobs and a range of benefits previously offered

[57] 'Amr Hashim Rabi', "Rijal al-a'mal wa-tashri'at al-khaskhasa," *Qadaya Barlamaniyya* 40 (July 2000): 6–11.

[58] Robert Springborg, "Agrarian Bourgeoisie, Semiproletarians, and the Egyptian State: Lessons for Liberalization," *International Journal of Middle East Studies* 22 (November 1990): 447–472; Reem Saad, "State, Landlord, Parliament, and Peasant: The Story of the 1992 Land Tenancy Law in Egypt" in Alan Bowman and Eugene Rogan, eds., *Agricultural Egypt from Pharonic Times to Modern Times* (Oxford, UK: Oxford University Press, 1999), 387–404.

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by the state, often still cling to the earlier view that the state party is for everyone, even as their share of distribution diminishes. Many withdraw from politics altogether.

The Progressive Unionist Party is the main political party pressing the issues of the losses of the peasantry and labor in the market-oriented environment, in their call for a return to the Nasserist bargain; but without access to state patronage, it cannot compete with the NDP's vastly diminishing offer of state spoils to the popular sectors. Their parliamentary support has remained weak (Table 1).

Workers and peasants probably form much of the support for the Muslim Brotherhood and other Islamist tendencies, but religious parties are outlawed in Egypt, as in most countries of the Arab world. There is real popular force behind the Islamist groups that renounce violence and claim to be willing to participate in electoral politics as democrats. However, this claim is questioned by Egyptians in state and society and by external actors. The Muslim Brotherhood has participated in the elections of the last two decades in Egypt either as independents or in alliance with other political parties. The 1984 and 1987 vote tallies for the Muslim Brotherhood shown in Table 1 reflect their share as part of an alliance with legal political parties. The overall support for Islamists is difficult to determine, since adequate public surveys do not exist and the government utilizes its most intense and sometimes fierce mechanisms of repression against those groups. It is noteworthy that the Muslim Brotherhood made the most significant gains in the 2005 parliamentary elections that the regime heralded as a step forward in the democratization process (Table 1). This suggests that the group is poised to gain most in the short term if the political system is opened further.

Overall, while potent as a political force, Islamist political parties in Egypt have little hope of being the relatively peaceful organizational vehicle for an opposition movement from below that achieves democracy by overwhelming limited political reforms. Repression of the Islamists is probably too great, and whether its assertions are accurate or not, the regime paints all Islamists as participating in violence. In addition, the most potent Islamists may not be liberals or democrats, risking a new authoritarianism by democratic means if they were allowed to participate in electoral politics freely.

In the end, as Table 1 indicates, dominant-party rule has been resilient in Egypt. Opposition-party weakness there is clearly linked to electoral fraud and outright oppression,[59] but also, opposition-party weakness and, ultimately, democratic failure are also tied to how economic reforms contributed to the stabilization of dominant-party rule during a period of transition.

[59] Vickie Langohr, "Too Much Civil Society, Too Little Politics: Egypt and Liberalizing Arab Regimes" in Pripstein Posusney and Penner Angrist, eds., *Authoritarianism in the Middle East*, 193–218.

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Tunisia

The transformation of the ruling party in Tunisia was less dramatic than in the case of Egypt, but the trend is similar. Within the state party, the power of peasants and workers has been reduced, and the power of the rural gentry and bourgeoisie has been enhanced. Tunisia's populism/socialism was at its strongest in the 1960s. Land reform was not as extensive as in the case of Egypt, focused largely on ex-colonial lands, and the socialist movement was stopped before threatening the Tunisian private sector. Still, as in Egypt, the Tunisian economy was heavily statist until the 1990s, although the state had also sponsored a dependent private sector in the previous two decades.[60]

Shortly after taking power, President Ben Ali revamped the ruling party with cadres sympathetic to his economic liberalization agenda, many of them businessmen and large landowners poised to benefit from increasing liberalization.[61] He changed the party's name from the Socialist Destour, a name it had taken in the 1960s, to the Rally for Constitutional Democracy. Ben Ali and the RCD have resolved the most contentious issues in Tunisian politics since he came to power—the privatization of the ex-colonial lands and state-owned enterprises—in a manner that served the interests of elite economic groups decisively. The ruling party in the country has become a party of rural notables and the urban bourgeoisie.[62] This transformation of the state party occurred as Ben Ali implemented the reforms that were the central plank in his platform when he came to power via a constitutional coup in 1987 that averted a potential civil war between the government and Islamists.[63]

Two forces, Islamists and the national trade union federation (UGTT) offer the potential to drive democratization and break through Ben Ali's effort to transform the social base of the ruling party and create consensual authoritarianism via the use of multiparty experiments that have increasingly become a charade since their inauguration in 1989. The UGTT actually was the strongest opposition social force in Tunisia in the 1970s, and their strikes and calls for democracy led to the country's aborted 1981 experiment in multiparty democracy.[64] However, by the time of the political reforms of the late 1980s, the organized labor leadership had been cowed by a range of adverse domestic and international political economy conditions and appeared to accept their subordinate status in reconfigured authoritarian rule. Prior to signing new corporat-

[60] Eva Bellin, *Stalled Democracy*.

[61] Guilain Denoeux, "Tunisie: Les Elections Presidentielles et Legislatives, 20 Mars 1994," *Monde Arabe: Maghreb-Machrek* 145 (July–September): 49–72.

[62] Stephen King, "Economic Reform and Tunisia's Hegemonic Party: The End of the Administrative Elite," *Arab Studies Quarterly* 20 (Spring 1998): 59–86.

[63] King, *Liberalization Against Democracy*.

[64] Ibid.; Mohamed Elhachmi Hamdi, *The Politicisation of Islam: A Case Study of Tunisia* (Boulder, CO: Westview Press, 1998).

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TABLE 2

Tunisian Legislative Elections

Party	*1989*	*1994*	*1999*	*2004*
Democratic Constitutional Rally	141	135	148	152
Democratic Socialists	0	10	13	14
Unionist Democratic Union	0	3	7	7
Party of People's Unity	0	2	7	11
Movement for Renewal	0	4	5	—
Social Liberal Party	0	0	2	2

Source: Brumberg, "Liberalization versus Democracy"; Economist Intelligence Unit Country Profile–Tunisia 1990–2006.

ist arrangements with the state and the national business association in the early 1990s, the UGTT president stated:

> Our Union ... has chosen in principle to adapt itself to international transformations by adopting methods of work and intervention.... Today the union is trying to adapt to changes in the international economic system, the structural adjustment programs, the new world order and the market economy. The task of meeting these challenges is the union's preoccupation.[65]

The UGTT has retreated from its demands for broad political reforms and democracy in Tunisia.

The regime, in a period of harsh repression in the early 1990s, deactivated the country's Islamist movement and the political party al-Nahda, which became the most potent opposition force in Tunisia in the mid and late 1980s. The Islamist tendency in Tunisia, according to some available surveys and the claims of the leadership of al-Nahda, is largely a democratic tendency. However, this has not prevented the regime from claiming the contrary and squelching its development.

Currently, political apathy and cynicism dominate electoral politics in Tunisia. Many people have retreated from formal political participation. The regime utilizes the familiar fear of the Islamists coming to power, and claims to provide economic prosperity and stability to justify closing political space virtually completely after the promising start in the late 1980s and early 1990s that had led to some observers referring to Ben Ali as the Gorbachov of the Arab world, bringing both *perestroika* (economic restructuring) and *glasnost* (political opening) to this North African country.

The best hope for the opposition to move beyond Ben Ali's limited democratic opening came in the late 1980s and early 1990s, when al-Nahda and the Democratic Socialists (Table 2) considered an alliance with other political parties to overwhelm the state party. However, this alliance failed, partly due

[65] Chris Alexander, "State, Labor, and the New Global Economy in Tunisia" in Vandewalle, ed., *North Africa*, 177.

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to divide-and-rule tactics by the regime. Facing these challenges, the regime has been able to rely on its revitalized state party and the increasing support of the bourgeoisie and large landowners to convert a transition away from authoritarianism into a façade of multiparty politics.

Algeria

The transformation of the social base of Algeria's state party, the Front de Libération Nationale, occurred within the context of joint economic and political reforms that spiraled into civil war. The FLN was the ruling party in Algeria through the battle of independence (1954–1962) and has been ever since. It was the only legal party of the country from 1963 to 1989. At its inception, the FLN was known for its peasant social composition and rural mobilization.[66] Oil and natural gas reserves funded the socialist revolution implemented by Houari Boumedienne, President from 1965 to 1978. The populism of the party lacked many of the "enemies of the revolution," as in Egypt, because the long period of French colonialism (1830–1962) largely prevented the emergence of Algerian economic elites. Still, the identity of the FLN was populist and socialist in flavor, at least until the presidency of Chadli Benjedid (1979–1992), who began Algeria's economic liberalization process. Under Benjedid, the party's populist character, and power in general, were reduced.[67]

Algeria experienced an authentic and full democratic transition in late 1991 and early 1992. The Front for Islamic Salvation won the first round of fair legislative elections and was poised to win the second round and take control of Parliament from the ruling FLN in January 1992 when the military moved in to stop the process, thereby sparking a civil war that claimed over 150,000 lives. There is still a spattering of violent conflicts between the regime and Islamists, but the regime is attempting to reconstitute multiparty politics and authoritarianism by strengthening the historical ruling party, the FLN, in alliance with a second party created by the regime, the National Rally for Democracy (RND) and two small Islamist parties.

In terms of democratic prospects, Algeria has an advantage over Egypt and Tunisia, in that due to the civil war, the regime had to accept a proportional representation electoral system desired by the opposition in order to coax them into participation in the renewed multiparty experiments. Proportional representation has allowed a more diverse set of voices to enter Parliament, including an ethnic Berber movement, but the overall dynamic since the 1992 military takeover and the mid 1990s attempt to reestablish multiparty elections has been the rebirth of the FLN and its ally, the RND (Table 3).

[66] Elbaki Hermassi, *Leadership and National Development in North Africa* (Berkeley: University of California Press, 1972), 128–132.

[67] John Entelis, *Algeria: The Revolution Institutionalized* (Boulder, CO: Westview Press, 1986), 165–173.

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TABLE 3

Algerian Parliamentary Elections

Party	*1991*	*1997*	*2002*
Front for National Liberation	16	62	199
Islamic Salvation Front	188	—	—
El-Islah/Movement for National Reform	—	—	43
Democratic National Rally	—	156	47
Movement of the Society for Peace	—	69	38
Workers' Party	—	4	21
Algerian National Front	—	—	8
Islamic Renaissance Movement	—	34	1
Party of Algerian Renewal	—	—	1
Movement of National Understanding	—	—	1
Social Democratic Front of Socialist Forces	23	20	—
Berber Rally for Culture and Democracy	—	19	—
Nonpartisans	—	—	30

Source: Brumberg, "Liberalization versus Democracy."

In a change from its Arab socialist heritage, the FLN/RND ruling alliance in Algeria has come to represent economic elites. Chadli Benjedid, President from 1979 to 1992, began Algeria's economic liberalization process. During his tenure, the party's populist character and power in general were reduced.[68] The FLN assumed that it would win by overwhelming numbers multiparty elections, which began at the local level in Algeria in 1990. Instead, the FIS demonstrated surprising strength. The FIS utilized the networks of mosques that they controlled, the support of various informal groups that claimed to be based on Islam, and the support of numerous teachers from various levels and disciplines to generate the most powerful opposition that emerged from the regime's political opening, which began when oil prices dramatically fell in 1986 and painful economic reforms implemented to address the economic crisis led to riots that were put down in bloody fashion in 1988.[69] The FIS ran an anti-corruption campaign and pledged also to help the impoverished urban centers filled with the unemployed and discontented youth that are probably its strongest supporters. Its program, like other Islamist party economic programs, has both a free market/private enterprise emphasis and strong redistributive elements based on Islamic norms. It may attract religious-minded business people, but its shock troops and numbers come from the subordinate socio-economic groups. The liberal and democratic character of the FIS and its connection with various violent Islamist groups are more questioned in Algeria than is the case for al-Nahda in Tunisia.

[68] Ibid.

[69] Remy Leveau, "Algeria: Adversaries in Search of Uncertain Compromises" (Chaillot Paper 4, Institute for Security Studies of the European Union, 1996).

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The FIS is currently outlawed and repressed in Algeria, thus severely restricting the chance of this opposition force again undertaking an attempt at post–civil war limited political reform. In the meantime, the FLN/RND is being revitalized as a ruling party, albeit one that no longer has a populist character. The regional and ethnic Berber movement has some power in the political system and makes claims for broader goals of democracy, but may have limited appeal for non-Berbers and nonresidents of the Berber-dominated Kabilye region of Algeria. Proportional representation in Algeria may ultimately provide enough political succor to allow for the gradual development of political parties that represent workers and peasants and that will be able to challenge the dominant state party.

Syria

The Baath Party in Syria has transformed its populist character the least of the four countries. The slow transformation of development strategy and coalitional support in Syria is generally attributed to sectarian conflicts. As noted previously, the regime is dominated by a minority group with peasant ties, the Alawi, a Shiite splinter group that represents 12 percent of the country's population, the majority of which is Sunni Muslim. Some analysts downplay the Alawi nature of the Syrian regime and instead focus on broad group and class coalitions. They argue that in the 1960s and 1970s, the social base of the party consisted of rural peasants, urban public sector workers, and minorities in general.[70] Clearly, the transformation of the Baath in Syria has been slowed by class and sectarian divisions, but analysts are now claiming that the party's social base is moving away from peasants and public sector workers to a military–merchant alliance that transcends the Alawi state/Sunni bourgeoisie split.[71]

In Syria, the hegemony of the Baath Party in Parliament is guaranteed by a law requiring 167 of the 250 seats to be held by a national patriotic front of political parties led by the Baath, which, in the 2003 elections, won 135 seats. In that election, independents won 83 votes, but the front that is allied with the state is assured dominance. In this manner, satellite political parties are permitted some voice, but political monopoly is maintained. In the meantime, the Baath Party is gradually becoming more comfortable with the country's traditional economic elites. The country has moved back from the political opening in 1990, when independents gained a significant number of seats in Parliament for the first time (Table 4). Due to the sectarian conflict, more of the opposition

[70] Raymond Hinnebusch, *Authoritarian Power and State Formation in Baathist Syria: Army, Party, and Peasant* (Boulder, CO: Westview Press, 1990); Patrick Seale, *Asad of Syria: The Struggle for the Middle East* (Berkeley: University of California Press, 1988).

[71] Joseph Bahout, "The Syrian Business Community, Its Politics and Prospects" in Eberhard Kienle, ed., *Contemporary Syria* (London: British Academic Press, 1994), 72–80; Glenn Robinson, "Elite Cohesion, Regime Succession and Political Instability in Syria, *Middle East Policy* 5 (January 1998): 159–179.

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TABLE 4

Syrian Parliamentary Elections[a]

Party	*2003*	*2007*
People's Council	250	250
National Progressive Front[b] (including al-Baath)	167	179
Independents	83	78

Source: MENA Election Guide, accessed at http://mena_electionguide.doc.

[a]The number of independents elected in the Syrian parliament in the 2003 election (83) is the same as in the 1990 election, in which they entered the People's Assembly for the first time.

[b]The National Progressive Front Coalition includes the Arab Socialist Baath Party, the Communist Party of Syria, the Arab Socialist Union, the Social Democratic Unionists, the Socialist Unionists, and the Syrian Social Nationalist Party.

in Syria is likely to come from the bourgeoisie, unless the regime, as it seems to be doing, is able to mold a new dominant class under dominant party auspices, composed of former state capitalists, the bourgeoisie, and landed elites.

Currently, regime elites in Syria are mulling over what they call gradual moves toward democracy and what observers describe as the modernization of authoritarianism along the lines of Mubarak's Egypt.[72] The changes contemplated in 2005 followed a brief political opening and reversal in 2000 after Bashar al-Assad succeeded his father. By 2001, however, the Damascus Spring of economic and political reform, once supported by the new President, was harshly repressed by the regime.[73] In the new potential transition, President Bashar Assad would legalize political parties outside of the national front and formally endorse a market economy.[74]

The Islamists in opposition to authoritarian rule in Syria were brutally repressed and deactivated in 1982 at Hama, where the conflict between the regime and Islamists led to between 10,000 and 20,000 deaths. For an extended period, that violent episode of repression seriously dampened opposition challenges from Islamists and any other opposition group. The Muslim Brotherhood in Syria at the time called for democratization. It is noteworthy that this group was much more a vehicle of the bourgeoisie than a movement representing the urban impoverished underclass, as was the case in Tunisia, Algeria, and Egypt.

In sum, among other factors, a mixture of institutional and socioeconomic structural dynamics operating within the critical juncture of political openings in Egypt, Tunisia, Algeria, and Syria in the late 1980s and early 1990s influenced how actors in state and society participated in the new electoral arenas proposed by the regimes and contributed to the failure of democracy in those countries. The bourgeoisie and landed elites favored by state policy failed to drive the development of viable opposition political parties necessary to over-

[72] Shadid, "Syria Heralds Reforms."

[73] Eyal Zisser, "Does Bashar al-Assad Rule Syria?" *Middle East Quarterly* 10 (Winter 2003): 3–15.

[74] Shadid, "Syria Heralds Reforms."

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come historical legacies of single-party rule during the multiparty experiments. Indeed, they flocked to the ruling state parties and helped to revive them.

Workers and peasants lost structural bargaining power and material resources due to state economic policies. These groups either accepted their subordinate status within the transformed ruling parties, withdrew from the political systems, turned to outlawed Islamist parties, or fought for the remnants of the old social contracts within trade unions still tightly controlled by the state. For the most part, they did not mobilize behind legal opposition political parties that had little access to the state patronage all the more necessary for the poorest of the countries' populations due to the character and consequences of economic reform in the region. These dynamics dampened the momentum necessary to take advantage of the limited political openings initiated by regime incumbents and advance multiparty competition and democratization.

The present analysis can be placed within the broader literature on persistent authoritarianism in the MENA. It complements other explanations for the weakness of opposition political parties in Arab countries. Much of this literature focuses on how authoritarian incumbents utilize institutional arrangements to disrupt the formation of opposition coalitions that threaten their rule. Of course, the bluntest incumbent strategy is sheer repression supplied by highly developed state security, military, and police operations. There is evidence that the Middle East stands out cross-regionally in this regard and also that international patrons have been reluctant to intervene during periods of heavy state repression, in contrast to the reaction of major international powers witnessing state violence elsewhere in the world.[75]

Moving beyond coercion, Marsha Pripstein Posusney contends that incumbent rulers choose winner-take-all electoral systems in order to hinder the formation of political party pluralism from historic single-party states. In contrast, proportional representation would allow the opposition to gradually build up support.[76] The Algerian case bears out her contention, because the regime conceded to demands for proportional representation in order to coax opposition participation in the elections that were designed to regain some social equilibrium after the regime's coup to avoid an FIS victory and subsequent civil war. In Algeria, opposition political parties have managed to develop a real presence in Parliament. On the other hand, however, one could also argue that the state has utilized the distribution of state assets to help rebuild the support of the historic state party, the FLN, which once again has become the dominant force in the Algerian legislature.

[75] Eva Bellin, "Coercive Institutions and Coercive Leaders" in Pripstein Posusney and Penner Angrist, eds., *Authoritarianism in the Middle East*, 21–42; Jason Brownlee, "Political Crisis and Restabilization: Iraq, Libya, Syria, and Tunisia" in Pripstein-Posusney and Penter Angrist, eds., *Authoritarianism in the Middle East*, 43–62.

[76] Marsha Pripstein Posusney, "Multiparty Elections in the Arab World: Opposition Responses" in Pripstein Posusney and Penner Angrist, eds., *Authoritarianism in the Middle East*, 91–118.

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Vickie Langohr suggests other tactics used by autocrats to maintain power. These include limiting opposition political party activities through various procedures, including depriving them of the funding and patronage available for state parties. Also, frequent electoral fraud and outright repression is common. In addition, analysts note opposition parties' limited access to public space, the significant deviation from parliamentary procedures such as giving power to unelected upper houses, the prevalence of independent candidacies that hinder the development of political party programs, and the lack of party financing.[77] Daniel Brumberg summarizes these tactics as staples of efforts in the region's "liberalized autocracies" that deform multiparty politics.[78]

In a different analysis of elite manipulation and institutional dynamics designed to disrupt the opposition, Ellen-Lust Okar argued for the Moroccan context that the Moroccan king utilized divide-and-rule tactics to produce impotent forms of multiparty politics in the 1980s and 1990s.[79] The king legalized moderate parties and banned radical ones. In order to continue to participate in the legal multiparty game, included parties demobilized rather than align with banned radical groups when economic crises and structural adjustment programs provoked political volatility.

Expanded beyond Morocco, the thesis is intriguing. In the Tunisian case in the late 1980s and early 1990s, Ben Ali utilized divide-and-rule tactics to hinder coordination between the most potent secular opposition, the Democratic Socialists, and the Islamist party, al-Nahda. This occurred during negotiations for a national pact and the inauguration of new legislative elections. Similarly, Mubarak has not allowed the Muslim Brotherhood the right to participate legally in elections, leading them to join forces with one or another secular opposition political party or to participate as independents, which weakens their organizational ability. In Algeria, rulers allowed Islamist parties to participate in elections in the 1990s and beyond while blocking the participation of the FIS, which was poised to win the 1991–1992 legislative elections.

The wiles of ruling incumbents who deployed divide-and-rule tactics to keep the opposition off balance probably contributed to their successful transformation of authoritarian rule. However, they also needed to create political support during this period of dynamic economic and political change, not just dampen the force of the mobilized opposition. Again, they had state parties and the rents generated by economic reform programs to solidify a base of support and manage elite differences. Thus, it is helpful to deploy an approach that extends institutional analysis to an examination of how economic reform programs provided resources for ruling elites to reestablish dominant coali-

[77] Langohr, "Too Much Civil Society," 193–220.

[78] Daniel Brumberg, "The Trap of Liberalized Autocracy," *Journal of Democracy* 13 (October 2002): 56–68.

[79] Ellen-Lust Okar, "Opposition and Economic Crises in Jordan and Morocco" in Pripstein Posusney and Penner Angrist, eds., *Authoritarianism in the Middle East*, 143–168.

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tions that aided their ability to rule. As Abdesalem Maghraoui noted in another analysis of persistent authoritarianism in Morocco, the manipulation of economic reform programs contributed to authoritarian trends in ways beyond providing rents for the groups that would form their pillars of support. He argued that the monarchy unremittingly framed economic questions in technical terms in order to sidestep the fundamental debate on the resources and distribution of power in the Moroccan political system. "Political parties that might have spearheaded democratic reforms meanwhile diluted their demands and embraced the monarchy's claim that the country simply need[ed] better economic management."[80]

Utilizing market reforms to establish new distributional coalitions of support or to demobilize the opposition by recasting questions of the distribution of resources into technical issues outside of politics demonstrates two ways in which the character and consequences of economic reform fostered authoritarian trends in the Middle East and North Africa. As noted earlier, this goes against the grain of much of the literature on the politics of economic reform, which, in a regional variant by Eva Bellin, posits that "economic reform might abet the cause of democracy by introducing more market mechanisms and curbing state discretionary powers. Such reform would wean key social forces [private sector capital and the organized working class] from dependence on the state and free them to act as agents of democratization."[81] While the dynamics Bellin describes might occur in the long term after the state has distributed all of the land and enterprises at its disposal, even that is questionable. As Robert Springborg and Clement Henry note, the emerging crony capitalism in the region may not be a merely transitional, functional phase for the further development of a productive market economy, since another plausible scenario is that the present state-dependent, crony capitalism may have created a nexus between the political elite and successful business people that is too central to the system, too institutionalized, and too remunerative to both sides for it to be easily broken."[82]

Conclusion

Domestic structural forces interacted with institutional legacies to squelch the democratic impulse that was apparent in Egypt, Tunisia, Algeria, and, to a degree, in Syria in the late 1980s and early 1990s. Economic reforms facilitated the transformation of the social base of the regimes by providing incumbent

[80] Abdesalem Maghraoui, "Depoliticization in Morocco" in Larry Diamond, Marc F. Plattner, and Daniel Brumberg, eds., *Islam and Democracy in the Middle East* (Baltimore, MD: Johns Hopkins University Press, 2003), 67.

[81] Eva Bellin, "The Political and Economic Conundrum: The Affinity of Economic and Political Reform in the Middle East and North Africa" (Carnegie Paper No. 53, November 2004).

[82] Henry and Springborg, *Globalization and the Politics of Development*, 162.

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elites with resources to construct distributional coalitions of rent-seeking rural and urban economic elites not interested in transparency or democracy. The capacities of state parties enabled the maintenance of elite consensus and the absorption of participatory impulses during the volatile period of transition away from a form of authoritarian rule.

In all four countries compared here—Egypt, Tunisia, Syria, and Algeria—there were movements toward political liberalization and, in some instances, real rumblings of democracy that belied blanket explanations about timeless cultural patterns that will not yield to democracy. In addition, in contrast to the expectations of the transitions framework, the periods of political openings were not conjunctures in which the structural parameters constraining and providing incentives for actor choices were loosened. Instead, these were conjunctures in which leaders utilized structural and institutional resources to resist any democratic impulses that emerged during the transitions away from forms of authoritarian rule.

In order to capture emerging political dynamics, actor-based explanations for regime outcomes in the region would have to be extended to include how rapidly changing economic conditions and institutions can provide resources for elites to drive the outcomes of political openings in the direction of their preferences. The character and consequences of state-led economic liberalization and single-party capacities helped rebuild coalitions of support during the reconfiguration of authoritarian rule in certain states of the Middle East and North Africa. Other institutional arrangements provided tools for incumbent autocrats to disrupt challenges made by opposition forces.

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On the Crossing of Rubicons: Norm Dissemination and Policy Idiosyncrasy in the UK

KENDALL W. STILES
DEBORAH WELLS

An increasing number of studies of the transnational spread of human rights and other norms rely on cross-national statistical patterns in the hope of identifying some common cause.[1] While the findings are intriguing, this paper is an effort to refocus attention on domestic factors that may disguise the causal dynamic hypothesized in these studies. Specifically, we argue that in some cases, the hypothesized correlation holds while the causal logic does not. Most of these theories are rooted in a rationalist framework that assumes policymakers are strategic, when in fact we shall see that decisions—even critical ones—are often the product of inaccurate information, superficial analysis, and flawed projections of the decisions' results. This is the case even for sophisticated and mature governments, such as that of the United

[1] Beth Simmons, "Why Commit? Explaining State Acceptance of International Human Rights Obligations" (paper presented at the Park City Conference on Delegation to International Organization, Park City, UT, 2–3 May 2002), accessed at http://www.internationalorganizations.org/html/uteh_meeting.html, 2 May 2004; Lisa Martin and Beth Simmons, "Theories and Empirical Studies of International Institutions," *International Organization* 52 (Autumn 1998): 729–757; Steven Poe, C. Neal Tate, and Linda Camp Keith, "Repression of the Human Right to Personal Integrity Revisited: A Global Cross-national Study Covering the Years 1976–1993," *International Studies Quarterly* 43 (June 1999): 291–314; Andreas Schedler, "Measuring Democratic Consolidation," *Studies in Comparative International Development* 36 (October 2001): 66–92.

KENDALL W. STILES is an associate professor of political science at Brigham Young University, where he studies and teaches international law and political economy. This article is part of a larger project on international law and its effects on national policy and practice. DEBORAH WELLS is a senior in political science at Brigham Young University. She has worked in the Scottish Parliament at different times since 2004.

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Kingdom during the second half of the twentieth century. Such decisions constrain policy options for future policymakers, often contrary to the intent of their predecessors.

This implies that whenever a correlation emerges, we must engage in careful case study work to ensure that we have also found causation rather than mere accident. In this study, we show that correlation and causation are sometimes only distant cousins, if they are related at all. Specifically, we will show that the process of internalizing international norms by policymakers can be the product of unexpected consequences from prior decisions—what could be called "blind path dependence." Policymakers are unaware of the implications of their choices but must respond to them as best they can under evolving circumstances. As we will see, historians telling the story of the United Kingdom's decision to incorporate the European Convention on Human Rights use the apt metaphor of "crossing the Rubicon" to describe how decisions made by British leaders shape the future in irreversible (and often unintended) ways.[2]

To begin, we will briefly review four theories that are used to explain global patterns in norm dissemination. Following this, we will show their apparent utility with respect to the UK case. In the next section, we will look more closely at three key policy decisions by successive British governments that culminated in the passage of the Human Rights Act in 1998 and its implementation in 2000.[3] In each instance, we will find that the decision was based on insufficient information, superficial analysis, false assumptions, and wishful thinking, contrary to the expectations of the theories. We conclude with recommendations for further research.

Four Hypotheses

The literature on norm dissemination offers four interesting hypotheses regarding the spread of human rights norms. Note that these propositions are not mutually exclusive. Rather, they each focus on somewhat different sets of actors and dynamics. That said, they all share the assumption that actors are rational and make strategic, utility-maximizing decisions.[4]

[2] Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford, UK: Oxford University Press, 2001), 686; Lord Lester of Herne Hill, "UK Acceptance of the Strasbourg Jurisdiction: What Really Went on in Whitehall in 1965," *Public Law* (Summer 1998): 234–259.

[3] Credit must be given to Allison for pioneering this methodology. See Graham Allison and Philip Zelikow, *Essence of Decision: Explaining the Cuban Missile Crisis* (New York: Longman, 1999).

[4] Simmons "Why Commit?"; Poe, Tate, and Camp Keith "Repression"; Andrew Moravcsik, "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe," *International Organization* 54 (Spring 2000): 217–252; Frank Schimmelfennig, "The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union," *International Organization* 55 (Winter 2001): 47–80.

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Electoral Strategy

An approach that draws primarily on rational-choice models argues that political elites in democratic regimes may choose to incorporate international norms if it is clear that doing so will help them succeed at the ballot.[5] Empirically, we should look for trends in public opinion polling on human rights issues and predict that acceptance of international human rights norms will tend to follow voter preferences.

Transnational Elites

This approach focuses on the role of transnational elites—individuals who circulate in both international and domestic elite circles and who serve as a conduit for new norms. These individuals actively advocate the adoption of new international norms, both as lobbyists and as policymakers.[6] As they become more numerous and rise to positions of increasing prominence, they will be able to shape public policy in accordance with these values.

Empirically, we would expect to find that where countries have large and active advocacy groups with transnational linkages, the adoption of international human rights norms would be more marked. We should also expect to see groups of countries in the same geographic region in which the transnational elite network operates moving together in their acceptance of human rights norms.[7]

Liberal Norms

Another perspective is rooted in liberal theories of democracy and states that societies that embody liberal norms are likely to accept new norms to the extent that they are logically consistent with existing liberal values. Early proponents of this view include Karl Deutsch and "democratic peace" ad-

[5] Barbara Geddes, *Politician's Dilemma: Building State Capacity in Latin America* (Berkeley: University of California Press, 1994); Mitchell Orenstein, "A Genealogy of Communist Successor Parties in East-Central Europe and the Determinants of their Success," *East European Politics and Societies* 12 (Fall 1998): 472–499; Scott Mainwaring, "Politicians, Parties, and Electoral Systems: Brazil in Comparative Perspective," *Comparative Politics* 24 (October 1991): 21–43.

[6] Thomas Risse, Stephen Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change* (Cambridge, UK: Cambridge University Press, 1999); Margaret Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Groups in International Politics* (Ithaca, NY: Cornell University Press, 1998).

[7] Schimmelfennig, "The Community Trap"; Beth Simmons, "International Law and State Behavior: Commitment and Compliance in International Monetary Affairs," *American Political Science Review* 94 (December 2000): 819–835; Jon Pevehouse, "With a Little Help from My Friends? Regional Organizations and the Consolidation of Democracy," *American Journal of Political Science* 46 (July 2002): 611–626.

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vocates such as Bruce Russett.[8] This approach is generally consistent with the finding that states tend to endorse international norms where domestic policy is already congruent with the norm.[9] More recently, advocates of this perspective have argued that elites in established democracies see less risk in embracing new international human rights norms than would those in undemocratic regimes and are therefore willing to make visible efforts, whether through the acceptance of human rights instruments or their incorporation in domestic law (or both).[10] Such changes can be expected to be incremental rather than radical. Naturally, there should be a strong correlation between a country's level of and experience with democracy and the acceptance of international human rights norms.

"Lock-in"

The "lock-in" hypothesis, first proposed by Andrew Moravcsik in 2000, draws heavily on the experience of Eastern European regimes that sought to consolidate their new-found civil rights by signing and incorporating as many international human rights instruments as they could.[11] At the global level, the argument was made that states that recently underwent a democratic transition would be particularly eager to show their support for international human rights norms, especially since many of the newly elected leaders were veteran dissidents and active in the international human rights movement. Lech Walesa, Nelson Mandela, and Vaclav Havel come to mind. From an empirical perspective, we would expect to see a strong correlation between democratization and acceptance of international human rights norms.

THE UK AND THE ECHR—A FIRST CUT

Shortly after winning the 1997 election, the Labour Party under Tony Blair passed the Human Rights Act, which formally incorporated the European Convention on Human Rights and Fundamental Freedoms (ECHR, or Convention). This represented the culmination of more than 50 years of debate on the subject and stands as one of the most significant constitutional reforms in

[8] Karl Deutsch, *Political Community at the International Level: Problems of Definition and Measurement* (New York: Archon Books, 1970); Bruce Russett and John Oneal, *Triangulating Peace: Democracy, Interdependence, and International Organizations* (New York: Norton, 2001).

[9] Oona Hathaway, "Do Human Rights Treaties Make a Difference?" *Yale Law Journal* 111 (June 2002): 1935–2042; James Raymond Vreeland, "CAT Selection: Why Governments Enter into the UN Convention Against Torture," accessed at www.international.ucla.edu/cms/Files/Vreeland_CAT_Selection_Oct8.pdf, 18 June 2007.

[10] Celest Allred, Jay Goodliffe, and Darren Hawkins, "Explaining Commitment: States and the Convention against Torture" (paper presented at the annual meeting of the American Political Science Association, Chicago, IL, 2–5 September 2004).

[11] Moravcsik, "Human Rights Regimes."

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TABLE 1

Chronology of British Incorporation of the ECHR

1949—Council of Europe negotiates the European Convention on Human Rights and Fundamental Freedoms, starting from a draft text put forward by the European Movement.
1950—The UK signs the ECHR, with exemptions regarding individual petition and applicability to colonial areas. European Court and Commission are established in Strasbourg.
1964—MP Terence Higgins challenges the new PM, Harold Wilson, regarding the grant of individual petition to UK citizens.
1965—The Wilson government grants the right of individual petition, to come into effect in 1966.
1975—The UK loses its first case at the European Court in Strasbourg.
1987—Following its second electoral defeat, the Labour Party begins a process of dramatically altering its platform, beginning with Neil Kinnock's emergence as Party leader in 1987.
1988—Charter 88 movement is founded with the aim of incorporating the ECHR and generally advancing civil rights and constitutional reform in Britain.
1992—Labour's new manifesto includes a proposal to incorporate the ECHR but fails to give the Party a victory at the polls.
1997—Labour under Blair wins in a landslide. The Human Rights Bill is among the first submitted to Parliament. It passes in 1998 and is formally implemented in 2000.
2001—Following the September 11th attacks in the United States, the Blair government passes the Anti-Terrorism Act of 2001, adding to police powers granted in bills passed in 2000.
2004—The Law Lords declare that provisions of the Anti-Terrorism Act are incompatible with the Convention.

British history.[12] Although the policy shift was dramatic, it was foreseeable from the point of view of our four hypotheses. Table 1 will help the reader become acquainted with the historical sequence of events leading up to the Human Rights Act.

Electoral Strategy

Until recently, the British public was not even polled on the question of civil liberties. But beginning in 1991, it became increasingly clear that demand was growing for a Bill of Rights of some fashion. Surveys indicated that while 60 percent supported a Bill of Rights in 1989, that share had risen to 73 percent by 1995. At the same time, a growing number of UK residents expressed distrust of the government's use of its powers. In 1991, 17 percent strongly agreed that the government could change citizens' rights too easily, while 43 percent strongly agreed in 1995. In 1994, 39 percent felt the UK was becoming less democratic, while in 2000, 54 percent felt the same way.[13] This seems to have followed not only a response to Margaret Thatcher's policies, which were seen as increasingly restrictive of civil rights, but also a general

[12] Keith Starmer, "Two Years of the Human Rights Act," *European Human Rights Law Review* 1 (January 2003): 14–23.

[13] Patrick Dunleavy, Helen Margetts, Trevor Smith, and Stuart Weir, *Voices of the People: Popular Attitudes to Democratic Renewal in Britain* (London: Politicos, 2001), 67–70, 132–133; Michael Foley, *The Politics of the British Constitution* (Manchester, UK: University of Manchester Press, 1999), 143.

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trend toward a more educated and cosmopolitan British society.[14] The result was increasing interest on the part of Labour and Liberal Democrats to capture public discontent regarding the constitution and thereby achieve electoral victory.[15]

Transnational Elites

The theory predicts that countries in the same region in which a given transnational network is flourishing will tend to develop and incorporate similar new norms. We find this to be true with respect to the European human rights regime, which stands out as the strongest regional regime by far. From the beginning, British lawyers were active in promoting these regional norms (Lord Maxwell-Fyfe led the European Movement in the 1950s, which drafted an early version of the European Convention on Human Rights). South African émigré Lord Scarman and Lords Lester and Irvine consistently advocated UK adoption of European human rights norms. All were part of a community of cosmopolitan intellectuals who freely borrowed from continental jurisprudence in their writings, speeches, and judicial opinions (particularly when acting in their capacity as Law Lords).[16] In fact, many scholars have argued that these individuals and others like them had begun the process of incorporating the Convention through the back door by applying its principles in case law.[17] They were perhaps the observers most disturbed by the UK's increasingly dismal track record at the Court in Strasbourg.[18]

Today, British human rights lawyers are still actively engaged in expanding regional human rights standards and play a critical role in UK policymaking. Tony Blair and his wife, Cherie Booth, have long been active in civil rights issues; Ms. Booth plays a key role in Matrix, one of the principal human rights law firms in London.[19] The Joseph Rowntree Reform Trust joined with the organizations Liberty and JUSTICE to sponsor research and public debate on such topics as a new Bill of Rights, reform of the House of Lords, and

[14] Anthony King, *Britain at the Polls 1992* (Chatham, NJ: Chatham House Publishers, 1993), 70.

[15] Foley, *Politics of Constitution*, 6.

[16] Robert Blackburn, "The United Kingdom" in Robert Blackburn and Jorg Polakiewicz, eds., *Fundamental Rights in Europe: The European Convention on Human Rights and Its Member States, 1950–2000* (Oxford, UK: Oxford University Press, 2002), 953.

[17] Foley, *Politics of Constitution*, 79; Lord Irvine "The Development of Human Rights in Britain under an Incorporated Convention on Human Rights," *Public Law* (Summer 1998): 226–239.

[18] Robert Blackburn, *Towards a Constitutional Bill of Rights for the United Kingdom: Commentary and Documents* (London: Pinter, 1999), 921; Clive Walker and Russell Weaver, "The United Kingdom Bill of Rights 1998: The Modernisation of Rights in the Old World," *University of Michigan Journal of Law Reform* 33 (Summer 2000): 497–560.

[19] Rosalind English, Barrister, in an interview with Kendall Stiles at One Crown Office Row, London, 22 June 2004.

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devolution of power to Scotland and Wales.[20] They also formed common cause with the social mobilization organization Charter 88—a key force behind the incorporation initiative.

There is clear evidence that transnational actors played an important role in setting the agenda for constitutional reform and pushing specific proposals through the institutions of government.

Liberal Norms

A comprehensive review of the British democratic tradition is unwarranted at this juncture. Suffice it to say that Britain was the originator of the liberal form of government, beginning with Magna Carta. As we will see, British elites often saw their role with respect to international human rights more as exporters than importers. This was especially true in the years following the Second World War. The UK was prominent in the drafting of the Universal Declaration of Human Rights and related documents, as mentioned earlier.[21]

We will see that UK elites sometimes fell prey to smugness with respect to human rights, which contributed, as we will see, to a false sense of legal invulnerability. But it is clear that British democratic traditions contributed to a general feeling of sympathy for international human rights norms. What is perhaps more important is the traditional British commitment to honoring all international legal commitments. This led policymakers, as we will see later, to consistently implement adverse Strasbourg Court decisions.[22] So the theory of liberal norm adoption appears to fit nicely with the 50-year trend we are considering in this study.

"Lock-in"

This hypothesis seems at first to be falsified by the British case. Given the character of British democracy, one would have expected little need for committing the government to stronger civil rights norms for the sake of future generations. But if one broadens the definition of "democracy" to include written civil rights protections, we find that Britain is in fact out of step with the continent. Lacking a written constitution and Bill of Rights, sovereign Parliament has historically had the (mostly latent) capacity to rescind the liberties of British citizens at will.

[20] David Feldman, "Civil Liberties" in Vernon Bogdanor, ed., *The British Constitution in the Twentieth Century* (Oxford, UK: Oxford University Press, 2003), 642; Lord Rees-Mogg, Member, House of Lords, in an interview with Kendall Stiles, Publishing House Offices, London, 24 June 2004.

[21] Simpson, *End of Empire*.

[22] Donald Jackson, *The United Kingdom Confronts the European Convention on Human Rights* (Gainesville: University of Florida Press, 1997).

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This reality became more obvious during the 1980s. The tradition of nonuse of Parliamentary powers seemed to be eroding,[23] making the historical reluctance to draft a formal Bill of Rights seem passé.[24] Lord Hailsham famously complained of the emergence of an "elective dictatorship," in which the sitting majority in Parliament could not be prevented from seizing power and taking away people's rights.[25] Parliamentary sovereignty—a doctrine that until then had been the embodiment of British democracy—was now seen as a loophole for the tyranny of the majority.[26] Thatcher "utilized the full scope for untrammeled power latent in the British constitution but obscured by the hesitancy and scruples of previous, consensus-based political leaders."[27] This sentiment was expressed by the left (especially by the Liberal Party and its successors) during Margaret Thatcher's administration, as she introduced a number of bills, such as the Official Secrets Act of 1989 that limited the flow of information about state practices and generally strengthened the powers of the police and security apparatus (especially in the context of the Troubles in Northern Ireland).[28]

Thus, even the "lock-in" hypothesis contributes to an explanation of the decision to incorporate the convention. Taken together, each approach to norm dissemination provides useful insights into the British case. It is clear that none is falsified by the case. One would expect that the inclusion of the UK case in a larger cross-national study would contribute to a significant overall correlation.

The implication is that reasonable political leaders in the UK incorporated the European Convention because they felt it would consolidate the liberties that made up the British political tradition. Doing so was easy because cosmopolitan elites and the mass public both encouraged the move. Doing so in 1998 made sense because of a fear on the part of Labour that opponents of civil liberties might regain and abuse power if not constrained once and for all. The picture seems coherent and complete.

The UK and the ECHR—A Second Cut

To review, our argument is that these apparent correlations fall short of explaining the decision-making process of British elites. We argue that policy-

[23] Blackburn, *Bill of Rights*, 915; Douglas Vick, "The Human Rights Act and the British Constitution," *Texas International Law Journal* 37 (Spring 2002): 329–372.

[24] On the opposition to a written Bill of Rights, see Albert V. Dicey, *Introduction to the Study of the Law of the Constitution,* 10th ed. (London: Macmillan, 1959), 195.

[25] Lord Hailsham, *Elective Dictatorship: The Richard Dimbleby Lecture* (London: BBC, 1976).

[26] Helen Fenwick and Gavin Phillipson, *Text, Cases & Materials on Public Law & Human Rights*, 2nd ed. (London: Cavendish, 2003), 18.

[27] K.D. Ewing and Colin Gearty, *Freedom Under Thatcher: Civil Liberties in Modern Britain* (Oxford, UK: Oxford University Press, 1989), 7.

[28] Feldman, "Civil Liberties," 630.

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makers are not generally capable of making far-sighted decisions that achieve the goals they set for themselves. This is true not only because the world is a complex place, but because policymakers often ignore vital information and make unwarranted assumptions about the consequences of their choices. The deficiencies in the decision-making process, however, do not diminish the seriousness of the commitments—commitments future leaders ignore at their peril.

With respect to electoral politics, we will see that the British public, while expressing support for incorporation of the Convention and other reforms, placed such a low priority on these policies that in the final analysis, many other issues have taken precedence—including a desire to fight crime by restricting civil liberties. Governments have found that a wide range of often conflicting policies find support simultaneously in the British electorate. Rather than following public opinion, supporters of civil rights reform tended to interpret polls as generously as possible to justify a preconceived plan.[29]

With regard to transnational and liberal hypotheses, we will see that although there was a core group of civil rights activists that saw European human rights standards as an extension of British liberal traditions, they were in a minority, even within the Labour Party. The bulk of expert opinion saw European norms as a challenge to British traditions and mounted a vigorous defense. The result was a series of policies that were ambiguous in their content and applicability. And finally, where the "lock in" notion is concerned, the government that was most constrained by the incorporation of the Convention was the very government that passed it. As we will see, the Blair government has found the Human Rights Act a significant impediment in its struggle against crime and terrorism—something it clearly did not foresee.

The British government faced three critical moments in its gradual acceptance of the ECHR. First was the decision to approve the effort to draft a convention on human rights in 1949. Second was the decision in 1965 to grant the right of individual petition to UK residents to appeal rulings to the Strasbourg Court. Finally came the decision to incorporate the Convention in the form of the Human Rights Act in 1997.

These decisions are important not only because they advanced British adherence to the Convention in significant ways, but also because they point to an important explanation that cross-national quantitative studies tend not to measure well: path dependence. Path dependence has been held in low regard by many scholars of norm dissemination, and thought of as a residual category roughly synonymous with "habit." This is an unfair treatment, however, since the notion of path dependence has far more to do with how current policy choices foreclose some future options and predispose the selection of others.[30]

[29] David Beetham, Iain Byren, Pauline Ngan, and Stuart Weir, *Democracy Under Blair: A Democratic Audit of the United Kingdom* (London: Politicos, 2001).

[30] Christian List, "A Model of Path-Dependence in Decisions over Multiple Propositions," *American Political Science Review* 98 (August 2004): 495–513.

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The decision to proceed with a discussion of the draft Convention in 1949, for example, made it extremely unlikely that the UK would reject the final product, no matter how flawed. Failure to accept the final product would have caused British allies to question the government's commitment to human rights and would have made it appear hypocritical. Once the Convention was adopted, the decision to reject the right of individual petition inevitably became untenable—especially as an increasing number of European states accepted it. Needless to say, this would not have been the case had the UK first rejected the draft Convention in 1949. The subsequent acceptance of the right of individual petition in 1965 had the unexpected result of British citizens actually taking their cases to Strasbourg—and winning. This in turn created strong incentives to internalize the Convention in order to cut down on the number of such cases. The passage of the Human Rights Act was thus a natural (perhaps inevitable) outgrowth of these previous decisions—and could not have taken place without them. This sequence of events was unique to Britain, and even there, it might have followed a different path (immediate incorporation in 1950 or repudiation of the draft Convention in 1949, for example). In each of these decisions, a Rubicon was crossed, whether the authors of the policies realized it or not.[31]

The choice of these decisions is particularly instructive since, as we will see, these decisions can be explained by resort to general theories of norm dissemination. However, a closer look raises serious questions about the explanatory power of these theories. This closer look is made possible thanks to recently declassified documents and a number of interviews by the authors with participants in the decision.[32] We also have made extensive use of work by Brian Simpson, Lord Lester, and Robert Blackburn.[33] It reveals a decision-making process that is often truncated, incomplete, and uninformed, and largely improvised in character. More often than not, the decision makers were surprised by the results of their policies and regretted the initial decision. This is true whether the number of parties was large or small, whether the process was public or confidential, and whether the decision was made quickly or slowly.

Drafting the Treaty

As a result of the British government's repeated claims in the years following ratification of the Convention, it is generally assumed that British elites wrote it. In fact, the Convention was approved only with strong reservations, fol-

[31] Simpson, *End of Empire*, 686; Lord Lester, "Strasbourg Jurisdiction," 253.

[32] Since some of these interviews involved Blair government officials, the subjects have requested the withholding of their names.

[33] Simpson, *End of Empire;* Lord Lester, "Strasbourg Jurisdiction," 234–259; Blackburn, *Bill of Rights.*

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lowing a concerted effort to gut it of its most potent provisions.[34] It would be more accurate to say that the Clement Atlee government was taken by surprise at the scope and strength of the Convention and that it spent considerable effort weakening and narrowing it to prevent exposing the UK to future embarrassment.

In 1949, the UK encouraged consideration of a human rights convention by the newly formed Council of Europe. It was seen by the Atlee government as a low-cost, low-risk initiative that might burnish the UK's pro-Europe credentials in the wake of its refusal to participate in early efforts at European economic integration.[35] As a result, a draft was put forward by the European Movement under the leadership of David Maxwell-Fyfe (future Lord Chancellor) and was warmly received by the Assembly of the Council.

The draft, however, went much further than the UK had anticipated, providing as it did for individual petition to a strong human rights court, for example. The Foreign Office warned that such an institution would offer "a small paradise for professional lawyers" as "every pressure group in every country" would lodge frivolous complaints.[36]

At the same time, the UK officials recognized the quandary they faced:

> It was quite out of the question, if any credibility in Europe was to be maintained, for the Foreign Office to adopt a whole uncooperative attitude. The Council of Europe was, after all, an institution, monstrous or not, which [Ernest] Bevin was largely responsible for creating in the first place.[37]

Negotiations thereafter lumbered along, delayed by a variety of parliamentary tactics employed by the UK authorities. The first step involved the creation of a panel of independent legal experts to scrutinize the draft convention. This panel was stacked with what the UK thought would be a skeptical group of legal scholars. But the panel approved the draft anyway, much to the government's surprise and consternation.[38] The draft was then sent to the Council of Ministers, a body of state representatives that could be expected to bend more readily to British influence than was the case with the larger, more democratic Assembly. The UK pressed for weakening the Court structure and replacing it with an advisory body of national representatives—the Commission. It also urged that the granting of individual petition and application of the Convention rights to colonial territories both be made optional. The UK also

[34] Lord Lester, "Strasbourg Jurisdiction," 237; Francesca Klug, *Values for a Godless Age: The Story of the United Kingdom's New Bill of Rights* (London: Penguin, 2000), 122; Blackburn, *Bill of Rights*, 859.

[35] Simpson, *End of Empire*, 647.

[36] Ibid., 656.

[37] Ibid., 683.

[38] Ibid., 685.

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lobbied its fellow Council members to excise the more progressive clauses in the Convention relating to freedom of movement, right to asylum, and nationality.[39] Ultimately, fellow Council members reluctantly agreed to these concessions, in part to appease Britain and ensure its participation in the Convention.[40] Thus the UK succeeded in eviscerating the Convention for which it later took credit.

Within Britain, the Convention received very little public attention, either in the press or in Parliament:

> Outside the Cabinet and the small group of ministers and civil servants involved in negotiating the terms of the European human rights charter, the Convention as a whole attracted negligible attention within the legal and political establishment of the UK. Only cursory references to the Convention were made in Parliament at the time, with no debate at all taking place during the period while the draft treaty was laid before the Commons and Lords.[41]

Thus, although the UK ultimately ratified the Convention, its reasons for doing so are clearly not consistent with our hypotheses. One would have expected Britain, as the most firmly established democracy in Europe—perhaps in the world—to take a firm leadership role and promote a strong, enforceable Convention. One would also have expected that ratification would have been the cause of enthusiastic grandstanding and much public celebration in light of widespread public support for civil rights in Britain. Instead, the UK's opposition to a strong enforcement mechanism left the European human rights system far weaker than it might have been.

Individual Petition

The pessimism and defensiveness that prevailed over the decision to strip the Convention of its more powerful elements in 1949 was a distant memory by the time the Labour government of Harold Wilson came to power in 1964. By this point, the Convention had been embraced enthusiastically in capitals across Europe. The Commission was working effectively, although the Court had yet to begin hearing many cases. Decolonization meant that applying the Convention to overseas possessions was increasingly irrelevant. Overall, ratification of the Convention was proving remarkably costless to the British elite.

This said, the Convention was not on the minds of either the elite or the masses in Britain in 1964, and so when Terrence Higgins, a Member of Parliament, began to ask when UK residents would have the right of individual petition, the new Prime Minister had no answer. But the question, combined

[39] Ibid., 688.
[40] Ibid., 695.
[41] Blackburn, "United Kingdom," 938.

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with lobbying by Peter Smithers, the British Secretary-General of the Council of Europe, forced Wilson to take a stand.[42]

The question was taken up by the Lord Chancellor, Lord Gardiner, who offered the following response:

> I do think that this would cost us nothing and would show that a Labour Government is not anti-Europe as such and would hearten all those who want to see as many disputes as possible settled by some form of independent tribunal.[43]

The Cabinet debated the move briefly in 1965, although no formal analysis of the implications of the policy was undertaken by Whitehall or the Prime Minister's Office. In the Cabinet debate, the Home Secretary expressed some concerns about the implications of granting individual petition with regard to a small number of active cases. Officials speculated that dissatisfied parties might opt to go to Strasbourg. But never did anyone seriously consider whether large numbers of British citizens would appeal their cases to Strasbourg. All agreed that justice could easily be found in the UK. The Lord Chancellor summed up the prevailing opinion:

> We confidently anticipate, there will be hardly any petitions of merit, in which case, apart from a certain amount of wasteful effort in Whitehall, the existence of the right of individual petition will do us no harm at all .... Past experience shows that very few cases go the Court.[44]

To appease the Home Office, the decision to grant individual petition was qualified in two respects. Since the ongoing cases would be resolved within a few months, the action was to take effect in 1966 (after the cases would be concluded), and the decision would be reviewable after three years. The policy was not debated in the House of Commons, and the action took effect largely without notice from the press and public.

By the late 1980s, the European Court in Strasbourg was hearing more cases from the UK than any other state, demonstrating that this rosy confidence was unwarranted. Clearly the UK authorities in 1965 had not considered the grievances of large segments of UK society such as ethnic and racial minorities. An honest appraisal of civil rights in the UK in 1965 would have led to a far more cautious approach. The comparison between the pessimism of 1949 and the overconfidence of 1965 is striking: both were equally based on a fictional conception of British law and society. What is similar is that in neither case did the decision makers see any pressing political need to take the actions in question, and in neither case did the policies ultimately affect electoral outcomes.

[42] Lord Lester, "Strasbourg Jurisdiction," 245.

[43] Ibid., 239, from a letter to Michael Stewart on 9 February 1965, contained in Foreign Office papers 371/184367.

[44] Ibid., 249, from a letter to the Foreign Secretary and Home Secretary on 9 August 1965, contained in Foreign Office papers 371/190591.

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The Human Rights Act and Its Aftermath

With respect to the ultimate passage of the Human Rights Act, electoral questions were paramount. However, the mood of the electorate was largely misjudged, beginning in the early 1990s, by the Party that would end up introducing the legislation. More importantly, the Labour Party had only a vague idea of how the Human Rights Act would affect its ability to enact other key elements of its platform, for example, its program for fighting crime and terrorism. The result was the hasty passage of a bill that Labour leaders have since regretted.[45]

The Labour Party experienced a profound shock after losing an election in 1979 and then again in 1983 and 1987. The prospect of becoming the permanent minority party loomed large, especially since Labour lost much of its support to the Liberal Democrats during this period. The realization prompted housecleaning at the highest levels of the Party, resulting in the rise of Neil Kinnock as Party leader, followed by John Smith a few years later. The new leadership took steps to isolate and ultimately expel the radical leftists at the top of the Party and to move its platform toward the center. While the more famous shifts entailed the abandonment of nationalization and the acceptance of market forces, as well as full acceptance of a strong UK presence in the European Union, the new platform also suggested constitutional reform. This shift was particularly dramatic since Labour was historically suspicious of judges and had resisted any measures that might enhance their role in policymaking.[46] Labour MPs made increasingly favorable references to a Bill of Rights during the late 1980s, although resistance was still strong in certain segments of the Party.[47]

In the early 1990s, John Smith spearheaded a wholesale policy review that led to the formal adoption of a constitutional reform agenda, including incorporation of the European Convention and/or a Bill of Rights, according to Human Rights Office Director Mark dePulford and Human Rights scholar Francesca Klug.[48] Smith told a gathering of Charter 88 supporters in 1992:

> We are alone among the major Western European nations in not laying down in legislation the basic rights of our citizens and in not giving them a direct means of asserting these through the courts.[49]

[45] Interview with government official. Kendall Stiles conducted a number of interviews with senior government officials that were off the record. These were all conducted in London in June 2004.

[46] Feldman, "Civil Liberties," 623.

[47] Blackburn, *Bill of Rights*, 855.

[48] Mark dePulford, Director, Human Rights Office, in an interview with Kendall Stiles at the Human Rights Office, Constitutional Affairs Department, London, 21 June 2004; Francesca Klug, Human Rights Scholar, in an interview with Kendall Stiles at LSE offices, London, 24 June 2004.

[49] Blackburn, *Bill of Rights*, 933.

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In his view, this failure helped to explain the heavy flow of UK residents to Strasbourg and their increasingly frequent success. These legal victories were beginning to force the British government to adopt piecemeal many of the civil rights reforms liberals had been advocating, but at a heavy price in damaged reputation.[50] He argued that incorporation of the Convention would stem the flow of British cases to Strasbourg by strengthening the rights of UK citizens and giving them local remedies where breaches had occurred.

While Smith appears to have been genuinely sincere in his commitment to rights, he also believed that this was a winning electoral strategy for 1992. It came as a surprise that the Conservative Party candidate, Prime Minister John Major, was able to turn the issue against Labour. He portrayed Labour as a threat to British traditions—a charge that resonated with the British suburban middle class. This development came as a particularly jarring surprise, since Labour leaders had assumed that the public was disturbed by the various measures taken by Thatcher and Major to strengthen police powers, centralize administration in London, and intensify secrecy at Whitehall.[51] Labour polled a mere 34.2 percent of the vote in 1992 and learned the hard way that constitutional reform wins few votes in the final analysis.[52]

Despite this setback, Tony Blair picked up the civil rights baton on his rise to Labour Party leadership in 1994 following John Smith's death. His internal campaign for the job included a promise to incorporate the Convention.[53] Blair's position seems to have flowed from a number of factors. First, he was a modern, cosmopolitan lawyer who was heavily influenced by his wife's enthusiasm for civil rights law and by the advice of his mentor, Derry Irvine (future Lord Chancellor), a strong supporter of constitutional reform in general and of incorporation in particular.[54] He was also receptive to advice coming from the legal profession and policy think tanks, such as the Institute for Public Policy Research (IPPR) and the British Institute of Human Rights, many of which supported incorporation.[55]

Blair, however, did not receive any discernible boost at the polls from incorporating the Convention. Surveys indicated widespread ignorance of the European Convention and a low level of concern about civil rights

[50] British Institute of International and Comparative Law and the British Institute of Human Rights, *Aspects of Incorporation of the European Convention on Human Rights into Domestic Law* (London: Bourne Press, 1993), 59.

[51] Ewing and Gearty, *Freedom Under Thatcher*.

[52] Foley, *Politics of Constitution*, 204.

[53] Klug, *Godless Age*, 162.

[54] English, "Interview"; Dominic Egan, *Irvine: Politically Correct?* (Edinburgh: Mainstream Press, 1999).

[55] Blackburn, *Bill of Rights*, 1013; interview with government official.

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in general (especially when compared with other issues such as law and order and health care).[56] Even the IPPR had noticed the lack of interest in civil rights:

> Recent government restrictions on civil rights and liberties have not been marked by widespread public protest. The public in general is more aware of the importance of maintaining law and order, or national security, than of protecting the sometimes competing requirements of, say, freedom of speech, personal privacy and confidentiality.[57]

Although Labour won in a landslide in 1997, surveys conducted by the Democratic Audit and other research groups make it clear that constitutional reform in general and incorporation of the Convention in particular did not influence voters' choice of candidates in any significant way.[58]

Alongside his advocacy of constitutional reform, Blair introduced a proposal to strengthen police powers—a far more popular proposal.[59] He appears not to have considered the possibility that his actions might well conflict with each other.[60] On the one hand, with such measures as the Human Rights Act, devolution, and empowering municipal governments, his was perhaps the first British government to campaign on a promise to constrain its own powers once in office.[61] On the other hand, adopting these measures made his task of fighting crime and terrorism far more complicated.[62]

The Human Rights Bill fell short of giving judges the power to nullify Acts of Parliament, but it did give them the responsibility to declare Acts of Parliament "incompatible" with the Convention. Such a declaration would place pressure on Parliament to amend the offending legislation, although it would not require it to do so.[63] This was done to appease Conservatives and Labour backbenchers who feared the weakening of Parliamentary sovereignty.[64] The Act passed with a large, cross-party majority in both chambers of Parliament in 1998.

Not only were the provisions of the Human Rights Bill amended to minimize opposition, implementation was delayed to appease resistance in Whitehall. Full implementation was delayed until 2000 to give the government time to train judges and civil servants (the official explanation) and to give the

[56] Foley, *Politics of Constitution*, 240–246; Klug, *Godless Age*, 162.

[57] Blackburn, *Bill of Rights*, 1013.

[58] Foley, *Politics of Constitution*, 240–246; dePulford, "Interview."

[59] Helen Fenwick, *New Labour, Freedom and the Human Rights Act* (Harlow, UK: Pearson Education, 2000); Beetham, Byren, Ngan, and Weir, *Democracy Under Blair*.

[60] Interview with government official.

[61] Foley, *Politics of Constitution*, 226–244.

[62] Interview with government official.

[63] Jonathan Cooper and Adrian Marshall-Williams, *Legislating for Human Rights: The Parliamentary Debates on the Human Rights Bill* (Oxford, Hart: Marshall-Williams, 2000), 13.

[64] Fenwick, *New Labour*.

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Home Office the time to sift through existing laws and policies to identify those that would most likely prompt legal challenges (the unofficial explanation).[65] In spite of the long delay, civil servants were given very little training. As put by an internal government report:

> Despite developments, public bodies continue to struggle to make the connection between human rights, equalities and service improvement. In part, this is because the Act was introduced without any structured guidance and without a statutory duty to positively promote a human rights culture .... Despite the high profile of the Act, 58 percent of public bodies surveyed still have not adopted a strategy for human rights. In many local authorities the Act has not left the desks of the lawyers.[66]

The ultimate result was a general lack of interest in the Human Rights Act on the part of the government and considerable ignorance of the law among the public.[67]

Senior government officials have expressed concerns about the Act since its passage. They warned judges early on to be cautious in their review of legislation and administrative programs, with the implicit threat to repeal the Human Rights Act if too many findings of incompatibility were issued.[68] When David Blunkett replaced Jack Straw as Home Secretary, he derided it as a "lawyers' charter" that inhibits the state from "protecting the majority from the minority."[69] He was especially critical of protections for asylum seekers and immigrants—two groups often lambasted in the conservative tabloids, according to Shami Chakrabarti, Director of Liberty.[70]

As mentioned earlier, the Blair government also promised the electorate it would get tough on crime and terrorism. As part of this effort, it passed the Criminal Justice and Police Act in 2001 and two anti-terrorism measures, one immediately before the attacks of September 11 and a stricter one immediately after. In these acts, police powers were dramatically expanded, particularly with respect to interrogation, surveillance, and detention. Helen Fenwick has argued that they were "in some respects more authoritarian than much of the legislation passed in the recent pre-HRA years."[71] The Joint Committee on Human Rights, created by the Human Rights Act to advise Parliament on the

[65] See Jeremy Croft, "Whitehall and the Human Rights Act of 1998," *European Human Rights Law Review* 4 (September 2001): 382–407.

[66] Audit Commission, *Human Rights: Improving Public Service Delivery* (London: The Audit Commission, 2003), 7.

[67] Ibid., 3.

[68] dePulford, "Interview"; Lord Slynn, "Constitutional Change in the United Kingdom," *Mercer Law Review* 54 (Spring 2003): 1199–1214.

[69] David Panick, "Human Rights in an Age of Terrorism," *Israel Law Review* 1 (Spring 2002): 1–23.

[70] Shami Chakrabarti, Director, Liberty, in an interview with Kendall Stiles at Liberty offices, London, 28 June 2004.

[71] Fenwick, *New Labour*, 840.

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validity of pending legislation under the Act, reported its judgment that these bills would likely fall short.[72] Given the obvious contradiction between its crime and terror policies and its commitments under the Convention, the Blair government formally notified the Council of Europe that it was derogating its commitment under Article 5 of the Convention, which prohibits detention without charge beyond four days. It thus acknowledged publicly that it was setting aside human rights while it concentrated on domestic security matters. Shortly thereafter, it began detaining terror suspects who for various reasons could not be deported. Before long, the detainees challenged their captivity.

A crisis erupted in December 2004 when the Law Lords ruled that a key provision of the Anti-Terror Act—the power to detain foreign terror suspects without charge indefinitely—was incompatible with the Convention. Lord Hoffman wrote:

> The real threat to the life of the nation ... comes not from terrorism, but from laws such as these. It calls into question the very existence of an ancient liberty of which this country has, until now, been very proud—freedom from arbitrary arrest and detention.[73]

Detainees were released to house arrest in March 2005. At roughly the same time, the Blair government faced a political crisis as it submitted proposals to extend provisions of the 2001 law that were due to expire. Instead of rubber-stamping the bill, the House of Lords challenged the law on constitutional grounds. Even Lord Irvine, Blair's one-time mentor, voted against the government. Unable to reach a compromise in time, Blair was forced to allow parts of the law to expire. The legislative defeat served to weaken the Labour Party and strengthen the Conservatives a mere eight weeks before the general election.

It is reasonable to assume that this was not the scenario Blair had imagined when he introduced both the Human Rights Act and the Anti-Terror Law. He seems to have miscalculated several key factors in making the decision, including the electoral appeal of incorporation, the response to its initial proposal of judicial review, resistance from the Home Office, and the ability to reconcile human rights and domestic security. While the events of September 11 clearly forced the government to choose once and for all between expanding human rights and expanding domestic security, the tension was clear much earlier. In retrospect, it seems that the decision to pass the Human Rights Act was the product of either histori-

[72] Joint Commission on Human Rights, *Anti-Terrorism, Crime and Security Bill: Report, Together with the Proceedings of the Committee Relating to the Report and Minutes of Evidence*, 5th Report (London: The Stationery Office, 2001), vi.

[73] Martin Bright and Gaby Hinsliff, "Chaos: How the War on Terror Became a Political Dogfight," *The Guardian*, 13 March 2005.

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cal accident or serendipitous error, depending on whether one approves of the outcome.[74]

Conclusions

The "second cut" at the incorporation of the European Convention on Human Rights shows that although traditional theories of norm dissemination are generally consistent with overall historical patterns, this apparent consistency stems from reasons other than those implied by the major theories we have reviewed. Specifically, it is clear that none of the key decisions culminating in incorporation were governed by a clear understanding of basic facts or their implications. Generally speaking, the decisions were the product of perfunctory analysis by a very limited number of participants. Even where the analysis and debate were more thorough, key issues were not considered. Given British constitutional traditions and the lack of overarching founding documents, this should come as no surprise. But the outcomes stemmed as much from faulty predictions as from the country's legal traditions, meaning that the British case is unlikely to be *sui generis*.

As mentioned earlier, this means that electoral strategy, the influence of transnational actors, the foundation of liberal norms, and the "lock-in" mechanism did not shape public policy in any meaningful way. Ultimately, the decision-making process went forward for its own idiosyncratic reasons, even though on the surface, one can find support for these general theories.

All of this points to a need to be cautious in crafting hypotheses. We should take care to consider case studies alongside cross-national trends in order to clearly identify and articulate causal mechanisms. The end result will be fewer general propositions, to be sure, but their validity and logic will probably be stronger. Of special interest will be theories that take into account the foibles of decision making and the phenomenon we have called "blind path dependence." It is clearly overly optimistic to assume away this type of phenomenon, given its manifestation in one of the world's most mature and sophisticated democracies. It goes without saying that this type of situation is likely to be found in democracies in transition. Also of interest will be theories that stress the way in which states view international legal commitments. Imagine that the UK authorities took lightly the UK's international reputation as law-abiding; reversals in Strasbourg would not have generated any domestic political pressure and might have led to both a rapid acceptance of individual petition and a delay in the decision to incorporate.

What is the legacy of the Blair government as the UK faces a continuing barrage of adverse decisions left over from last century's filings? It is worth

[74] Disapproving: English, "Interview"; approving: Klug, "Interview"; Chakrabarti, "Interview"; Roger Smith, director of JUSTICE, in an interview at the JUSTICE office, London, 23 June 2004.

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noting that the UK lost 17 cases at the ECHR between January 2006 and June 2007. All of these cases involved challenges to Blair-era legislation, although most dealt with pension benefits and particular police procedures that were rather quickly revised. In one case, however, the government appealed a decision by the Court against overly long and complex procedures imposed upon an Iraqi asylum seeker.[75]

For now, it seems that the British government is willing to continue working in a cooperative way with the ECHR, although it is difficult to predict what Blair's successors will do. It is possible that their patience may wear thin over time and they will seek additional protections against adverse rulings.

[75] The case of *Saadi v. the United Kingdom*, Application #13229/03, Judgement issued 20 June 2006 in Strasbourg at the European Court of Human Rights.

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Book Reviews

The One Percent Doctrine: Deep Inside America's Pursuit of Its Enemies Since 9/11 *by Ron Suskind. New York, Simon & Schuster, 2006. 284 pp. $27.00.*

This book, an examination of U.S. intelligence activities after the September 11 terrorist attacks, is rather difficult to review for a scholarly journal. Ron Suskind, a reporter for *The Wall Street Journal* during the 1990s, seems to aim his writings at the general public as well as policymakers, not at the scholarly community. The style of this book is not that of a monograph. There are no footnotes; although the author refers to "nine thousand internal documents from the Treasury Department" (p. 353) in his possession, he does not specify which statements or quotes in the book are based on those documents. The publisher's blurb in the inside jacket calls this "a riveting work of narrative nonfiction." As befitting such a description, the text is quite lively, with very short sentences and paragraphs throughout the volume, which is liberally sprinkled with direct quotes that are not footnoted.

It is thus virtually impossible to assess the contributions of the book to the scholarly literature. For instance, early in the book, the author refers to "a global village of Islamic terrorists" (p. 12), or "new transnationalists" (p. 35) against whom the United States was devising "a global strategy" (p. 15) for waging a "war on terror," a term that was becoming part of "the global vernacular" (p. 19). Two years into this war, the author notes, "the global community was thinking constantly, almost obsessively, about the dictates of U.S. power" (p. 264). In view of the fact that there is already voluminous scholarly literature on globalization, "the global," "transnationalism," and the like, it might have been expected that the book would place itself in the context of this literature. If it had done that, its contribution to the ongoing scholarly debate on globalization would have been clearer.

The book may, nevertheless, be of interest to readers of this journal as a primary source. It presents one contemporary observer's attempt at making sense of U.S. decision making in the ongoing war on terror. Curious about intelligence operations and concerned over their domestic reach, Suskind interviewed a large number of officials, including those at the Central Intelligence Agency, read a voluminous amount of material, and pieced together a plausible story of what boils down to President George W. Bush's anti-terrorist

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strategy, or lack thereof. The author portrays Bush as being devoid of any sense of "policy process" (p. 225), and far more interested in results (such as the capturing of terrorist suspects) than in process. The defining of strategy and operative details were left to Vice President Dick Cheney, "the global thinker of the pair" (p. 213), who devised the "one percent doctrine" of the book's title, namely that a decision to go after a suspect need not be based on anything more substantial than 1 percent certainty.

The overall impression the book conveys, then, is that of a nation under centralized authority taking on global terrorists and pursuing "postmodern rules of international behavior" (p. 214). This is a rather frightening picture of the world's super-power presiding over a global village of terrorists. The book is almost entirely about U.S. decision making, not about terrorists, and the effect it produces on the reader is one of irrelevance, the irrelevance of U.S. power at the disposal of a leadership pursuing a 1 percent doctrine to wage a war on terrorism that is getting nowhere. Terrorists continue to thrive. But, at the same time, one could argue, so does the global community, which has not been decimated, either by the terrorists or by the U.S. "postmodern" unilateralists. To ponder reasons why would be a worthy undertaking for scholars and non-specialists alike. And one of the book's virtues is to encourage us to ask that question.

AKIRA IRIYE
Harvard University

China and Iran: Ancient Partners in a Post-Imperial World *by John W. Garver. Seattle, University of Washington Press, 2006. 401 pp. Cloth, $50.00; paper, $24.95.*

It was a strange sight when Mao Zedong's premier, Zhou Enlai, hosted a state visit by Empress Farah of Iran's right-wing Pahlavi dynasty in 1972, and bizarre again when the Islamic Republic's theocratic ruler Ayatollah Ruhollah Khomeini welcomed Chinese premier Li Peng in 1991. John Garver draws a bright thread between these visits and other events as well, making sense of one of the most complex, puzzling, and important diplomatic relationships in recent history.

Despite drastic changes of ideology on both sides, the leaders of Iran and China have pursued strategic benefits in their ties for 35 years. Iran has a large population, major resources, and a strategic location, but its ambition to be the dominant power in its region has been frustrated by its neighbors' enmity and the competing objectives of more-distant great powers—at different times, Britain, Russia, and the United States. China is the only big power for whom Iranian dominance in the Persian Gulf would be a good thing. Similarly, few powerful states look with pleasure on China's rise to great-power status, certainly not Japan, India, or the United States, and Russia's tolerance for China's

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rise may be temporary. Iran is one of the few major countries for whom the rise of China is an unadulterated plus.

Global events keep pushing Chinese and Iranian interests to converge. In the 1970s, both countries were threatened by the rise of Soviet influence. Now both want to see American dominance restrained. Both want to keep Pakistan strong to counterbalance India. China has the wherewithal to help Iran get nuclear technology, and Iran is able to help China solve its energy needs.

This is not a perfect marriage. The two countries have different visions for Central Asia—theocratic versus secular—and Iran has even tried on occasion to export Islamicism to China's sensitive Xinjiang province. Persian negotiators drive business deals so hard that even Chinese companies sometimes cannot stomach them. But to a remarkable degree, the two countries share a strategic vision. As Garver describes it, "A Chinese anchor in East Asia paired with an Iranian anchor in West Asia could well emerge as a central element of a post-unipolar, China-centered Asia circa the middle of the twenty-first century" (p. 295).

Garver's analysis of the past and future of the relationship is thoroughly researched, analytically astute, and lucidly presented. As in his authoritative book on China–India relations (*Protracted Contest: Sino-Indian Rivalry in the Twentieth Century*, Seattle: University of Washington Press, 2001), Garver sees the relationship he is studying from the inside—what it means to the participants in their own mental worlds, from the outside—how it works geostrategically, and from all around, in historical, cultural, diplomatic, strategic, and economic dimensions. If I had a quibble, it would be to question what is added by emphasizing what Garver calls the "spiritual" dimension, which looks to me like feel-good rhetoric about one another's great civilization to dress up a relationship based on strategic and economic interests.

Garver's analysis supports in different ways both the "China threat" and "peaceful rise" analyses of China's trajectory. Here are two very substantial countries that do not like American hegemony. In Garver's view, if America weakens, the China–Iran tie could undergird a new Asian order that would be adverse to U.S. interests across a broad swath of the map. He also shows, however, that both countries have limited power and that China places priority on maintaining its hard-won smooth relations with the United States. Beijing has pulled back from cooperation with Iran whenever the United States has made a vociferous enough case that missile sales, nuclear cooperation, or supplies of chemical weapons precursors (component chemicals) have threatened core American interests.

But in making this argument, Garver also shows how hard it is for Washington to get Beijing's attention. His case study of what it took to get China to stop selling Silkworm missiles to Iran in the late 1980s is worth several readings by commentators who like to pronounce on what the United States is achieving or not achieving in its relations with Beijing (or for that matter, with Pyongyang, Islamabad, or any other capital that has a complicated agenda, as

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most do). Engagement, bargaining, sanctions—all these things can work, but a look inside the diplomatic kitchen shows that like sausage-making, they don't work as smoothly as the end product may suggest. China lied and twisted and dealt double to try to accommodate both U.S. and Iranian pressure before finally complying—maybe—with American demands.

With close attention to Chinese, Iranian, Indian, and Pakistani foreign policy goals and methods, Garver guides us away from the simplistic idea that other countries are either allies or enemies, that they see things either our way or the wrong way, and that with friends, cooperation is automatic and if there are differences, it is a sign of malevolence. Rather, the grown-up reality is that some of our interests are compatible with those of other major nations and some are not. Both Chinese and American foreign policies are the result of complex cross-pressures. In any diplomatic relationship, there is a mix of trust and distrust, and pathways to cooperation are found through friction and conflict.

ANDREW J. NATHAN
Columbia University

Palestine: Peace Not Apartheid *by Jimmy Carter. New York, Simon & Schuster, 2006. 288 pp. $27.00.*

Any serious discussion of the Israeli–Palestinian conflict must take as its point of departure the fact that Israel has occupied Palestine for 40 years; has dispossessed hundreds of thousands of Palestinians from their villages, properties, fields, and orchards; has built Jewish settlements (or "neighborhoods," as Israel prefers to call the settlers in Arab East Jerusalem) in some of the most desirable areas of the West Bank; has impoverished most of the Palestinian people; has prevented them from exercising their political right of self-determination; and has repressed all Palestinian resistance to these policies—*all* Palestinian resistance, meaning not just terrorism against Israeli civilians, not just armed revolution directed against the Israeli occupying forces, but also nonviolent resistance.

Thus, it is the Palestinians and not the Israelis who are the main victims in this conflict. This is now widely understood everywhere in the West other than in the United States; indeed it is understood by many Israelis themselves, as is evident to anyone who follows the vigorous and highly self-critical discourse in the Israeli press.

By now, it should be obvious on its face that Israel, for reasons both of justice and its own long-term self-interest, must end its intransigence, withdraw from the occupied territories, and allow the Palestinians to create a genuinely independent but militarily limited Palestinian state in the West Bank, Gaza, and East Jerusalem—providing that the Palestinians end all forms of violence against an Israel that has returned to its own internationally recognized borders. Indeed, these central moral and empirical truths are so evident that their repetition has become almost a cliché.

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Except, that is, in this country, where it is certain that any serious criticism of Israeli policies will be greeted with outrage, blind denial, contempt, and even, in certain predictable quarters, with cries of "anti-Semitism." One of the latest examples has been the general reaction to Jimmy Carter's recent book—at least initially, for there are growing indications of unease and regret at the viciousness and ignorance of the attack, not only on Carter's book, but on him personally.

Carter reviews the history of the Israeli occupation and repression of the Palestinians and the resistance it has engendered, and states the case for a two-state solution. To be sure, not being a scholar specializing in the history of the Israeli–Palestinian conflict, as well as being a famously busy man, Carter does make a few mistakes, some of wording and some of substance. Although gleefully seized upon by his critics—some of whom have not shrunk from calling Carter "moronic," a "Jew hater," or "a liar"—the substantive errors are all minor and technical; those of wording (such as a clumsily worded phrase that unintentionally appeared to condone Palestinian terrorism so long as the Israeli occupation was continuing) have already been apologized for and corrected by Carter.

The greatest uproar, of course, has been over Carter's description of the Israeli treatment of the Palestinians as akin to "apartheid"—a deliberately provocative term, he has said, designed to get attention and provoke debate. While there are differences between the former white South African treatment of blacks and the Israeli treatment of the Palestinians, there are also enough similarities that the terms "apartheid" and "Bantustans" have been widely used in Israel itself, including by prominent former South African opponents of apartheid, by editorialists and columnists in Israel's leading newspapers, by Israeli human rights organizations—and even by some former high government officials.

Thus, Carter is far closer to the truth than his critics, and he has performed an invaluable service. Thanks to his strong pro-Israel and pro-peace record during his presidency, his continued national prominence, and his moral stature, the ludicrous initial reactions to Carter's book are giving way to more-reasoned and even appreciative responses. More generally, there are indications that Carter's book, along with other recent critiques of U.S. and Israeli policies, is contributing to a wider reassessment of the woefully uninformed and often hysterical American discourse on the Israeli–Palestinian conflict.

JEROME SLATER
State University of New York

Why Not Kill Them All? The Logic and Prevention of Mass Political Murder *by Daniel Chirot and Clark McCauley. Princeton, NJ, Princeton University Press, 2006. 268 pp. $24.95.*

Daniel Chirot and Clark McCauley, in their superbly written book, rhetorically ask why a dominant group with overwhelming power would engage in

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genocide of its weaker rivals, and having established reasons for fratricidal frenzies, they proceed to lay out measures that could prevent such human rights catastrophes. In their way toward to a comprehensive explanation, they not only draw examples from many cases of mass killings in history—some well-known, some obscure—but also traverse an amazingly wide range of disciplines, from cognitive science and psychology to most branches of the social sciences. The result is a highly readable synthesis of the extant theories, and should be seen as a significant contribution to the understanding of these deplorable manifestations of the darker side of human nature.

The authors begin their analysis by pointing out four main, often-overlapping motives for mass political murders: convenience, revenge, fear, and fear of pollution. To Chirot and McCauley, convenience represents the instrumental benefits of ethnic cleansing and genocide, in which a group undertakes mass murder because it believes that it is "cheaper" to kill the others than to share resources with them. From William the Conqueror's cleansing of the Anglo-Saxon tribes of Yorkshire to the expulsion of the Cherokees by the United States government, eliminations of groups have followed the logic of convenience. Although such campaigns have been motivated by convenience, the perpetrating group has often hidden its intentions under the pretense of moral equanimity. Thus, as an incredulous Alexis de Tocqueville remarked, "The Spaniards were unable to exterminate the Indian race by those unparalleled atrocities with indelible shame... but the Americans of the United States have accomplished this... with singular felicity, tranquilly, legally, philanthropically.... It is impossible to destroy men with more respect for the laws of humanity" (quoted on p. 22).

When a group feels that injustice has been done to them, they seek revenge. The fine line between justice and revenge is often blurred. The authors point out that many acts of mass killings, from the Biblical massacre of the Midianites by the ancient Israelites to the "Rape of Nanking" by the Japanese during WWII, have been undertaken to avenge past humiliations or to restore wounded collective pride.

Perhaps the most potent source of genocidal frenzy is simple fear. When a social group feels that its very existence is at stake in the face of an actual or perceived threat, it can often react with extreme violence. The "prospect theory," originally proposed by Daniel Kahneman and Amos Tversky, supports evidence of people framing their fear of losses at a higher level than the corresponding possibilities of gain. Such risk-averse behavior plays into the hands of those who advocate the immediate elimination of threat through extreme violence. From deadly ethnic riots around the world to the genocide of the ethnic Tutsis by the Hutus in Rwanda, elimination of groups follows the time-honored path in which leaders peddle fear among their followers.

Genocides and other incidents of mass murders not only occur fuelled by the simple fear of a group's existence, they also can be caused by what Chirot and McCauley call the "fear of pollution." They claim that "this is at once the most intense, but also the psychologically most difficult cause to understand for

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those who do not share the sentiment that a particular group is so polluting that its very presence creates a moral danger" (p. 36). Such fears can lead to the purifying purges of the odious "others." Throughout the ages, such "offenders" have endured the wrath of those who have feared for the purity of their genetic stock or the sanctity of their deeply held beliefs in the face of the contaminating effects of their despised enemies. This fear of pollution is often greatest between groups who are very similar. Perhaps that is why civil wars have brought out the most uncivil of human behavior spanning history, culture, and geography.

After analyzing the causes of mass killings, the authors turn their attention to the strategies of managing such episodes of violence. These strategies involve actions such as pressuring the leaders of the of government, imposing some kind of global justice on those who perpetrate genocide, developing local initiatives to lessen the effects of the four factors of mass violence, and focusing on ideology in shaping morality.

This impressive work, which provides such a systematic view of this extremely broad subject matter, is not without its weak points. While the book discusses the collective mind-set from a wide variety of perspectives, it pays but scant attention to the social, political, and psychological dynamics that help shape its most destructive form. Thus, similar to the primordialists, the analysis can be seen as static, where collective identities seem to be given. It would have served the authors better if they had spent more time in analyzing the role of the political entrepreneur who uses bits of religion and mythology and selective portions of history to concoct a story that resonates with a significant portion of the populace. Through the clever manipulation of the media and other state apparatus, leaders can control the media and heighten the fear of the "others" in the minds of their followers.

Finally, since Chirot and McCauley ask the question: "Why Not Kill Them All?" it would have been interesting to learn the costs and benefits of conducting genocides. These mass killings apparently worked for Moses, Ghengis Khan, William the Conqueror, and colonial masters from European nations. The instances of gains from genocide are considerably weaker in recent history, although one can argue that, except for Slobodan Milosevic, it worked for many Balkan leaders in the Yugoslav conflict.

Although these are interesting questions, the sins of their omission are relatively minor in comparison to what the authors have achieved in this short volume.

DIPAK GUPTA
San Diego State University

Who Intervenes? Ethnic Conflict and Interstate Crisis *by David Carment, Patrick James, and Zeynep Taydas. Columbus, Ohio State University Press, 2006. 264 pp. $49.95.*

Research on civil wars has often focused on the causes of conflicts and the role of external actors in their duration and outcome. Ethnic conflict has animated

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voluminous research, and scholars have considered ethnic competition between groups to be the main motivation behind the civil wars of the post-Cold War period. Except for a few studies, previous research has not touched on the possibility that civil war intervention can trigger crises between states. In *Who Intervenes*, David Carment, Patrick James, and Zeynep Taydas attempt to fill this gap by tracing the mechanism through which ethnic conflicts become internationalized through intervention by third parties and lead to interstate ethnic crises.

Who Intervenes combines two areas of research and, using a case-study approach, builds a link between civil war intervention driven by domestic considerations and international crisis. First, the book draws from liberal international relations theory, with its emphasis on domestic politics as an explanation of state behavior, and argues that political leaders intervene in ethnic conflicts to satisfy the ethnic affinities of their domestic audience. Yet, leaders are constrained by political institutions and can translate their preferences into policy only if the political system allows narrow policies that benefit small groups. In *Who Intervenes,* the authors find that ethnically motivated interventions are usually undertaken in institutional designs that do not impose significant constraints on executive power. In these systems, leaders can formulate domestic and foreign policies to mobilize masses on ethnic cleavages and can bear the costs of triggering an interstate ethnic crisis with a civil war by supporting an ethnic group. This is an important finding, with broader implications, and can be adopted to explore a more general relationship between international conflict and civil wars of ethnic, religious, or ideological origins.

Another important contribution of *Who Intervenes* is its emphasis on the dynamics of decision making behind intervention policies. In civil war literature, the motivations of interveners have remained largely unexplored, with few exceptions. This is a fundamental question, with a significant bearing on policymaking. The expected benefits of interventionist policies would have a direct impact on interveners' strategies, which, in turn, would shape the course and outcome of the conflict. *Who Intervenes* successfully argues that leaders strategically assess the benefits/costs of an intervention policy by considering the ethnic composition of their society and the institutional constraints on their authority.

Specialists in intrastate and international conflicts will be puzzled by the ways in which some terminology is used; some basic terms do not correspond to their traditional meanings in the discipline (for example, *intervention* and *escalation*) or do not have clear theoretical/empirical implications for the framework (for example, *opportunity* and *willingness*, *irredentist/separatist conflicts*, *vertical/horizontal escalation*). *Who Intervenes* usually approaches interstate ethnic crisis as a direct outcome of third-party intervention in a separatist/irredentist conflict. This approach does not differentiate between interventions in ethnic conflicts driven by third-party desire to support an ethnic group and those that do not involve this motive. Third-party involvement can be driven

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by the desire to preserve the status quo or to strengthen the governing group rather than to empower rebellious groups, in which case, it would not have the potential to trigger interstate crisis. The book also does not address the difficulty of unleashing interveners' motives without making some assumptions about how ethnicity and political institutions shape leaders' incentives. Besides, there is the unexplored possibility of a two-way relationship between ethnic conflict and interstate ethnic crisis in which the latter might encourage ethnic groups to rebel against their government. Despite some minor drawbacks, *Who Intervenes* is an important work that explores an unbeaten path and enlightens the reader about the elusive link between ethnic conflicts and interstate ethnic crises.

AYSEGUL AYDIN
University of Colorado

State of Denial: Bush at War, Part III *by Bob Woodward. New York, Simon & Schuster, 2006. 576 pp. $30.00.*

This book is the third volume in the series, "Bush at War," tracing the trajectory of the decision to remove Saddam Hussein from power and its aftermath. In some ways, it is the least interesting of the three. In the first book, *Bush at War*, there was a riveting story line and revealing insights regarding the new President, buttressed by national security minutes and interviews with all the principles, especially the President, on the lead-up to the war. The second installment, *Plan of Attack*, took readers behind the scenes of some of the debates and actual military and political planning that preceded and coincided with the onset of hostilities.

State of Denial is a tendentious title for a questionable narrative assertion. Clinically, the term "denial" refers to reality that is unseen because it is repressed before it can be addressed. This is quite different from a reality whose implications are not fully realized because when the "noise-to-signal issues" ratio is high, and the reality elements are embedded in a miasmic plethora of discordant information, they are hard to discern. It also differs from legitimate policy disagreements about what these information elements mean and how to address them. Neither of these constitutes denial in either the clinical or political sense.

The aftermath of the invasion is a complicated story that Bob Woodward feels can be understood according to three "tragic errors": disbanding the Iraqi Army, getting rid of 50,000 senior Baath Party members in the government, and sending home an interim Iraqi governing council. As anyone who has paid the slightest attention knows, these decisions were matters of heated debate, with many elements considered, not "denial," which leads, of course, to the absence of debate.

The United States did not "disband" the Iraqi Army so much as fail to immediately reconstitute it when most of its troops simply took off their uniforms

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and went home after the invasion. Nor would reconstituting the Iraqi Army have been an easy way to avoid the difficulties we now face in Iraq. What evidence is there for that? Simple. That has been U.S. policy since the lethality of the insurgency was recognized, and the army seized on that plan to extricate American forces as quickly as possible. As we have learned, blending Iraqis into an effective national army has proven to be a very difficult and time-consuming process. We are still years away from its conclusion, if we stay to finish that task.

So too, the debate about what to do about former Baath party members was intense. No one advocated removing local schoolteachers who had joined the party to keep their job. However, it was clear that you could not leave the top layers of the party in power. That would be akin to letting former Nazis run the German government during the American occupation after WWII. The real debate was how far down in the ranks to go and the methodology by which cases would be decided. Reasonable people disagreed about both, but again this was a not a case of "denial."

And finally, there was the error, according to Woodward, of disbanding the interim Iraqi governing council. This was the group that General Jay Gardner put into power as the Iraqi face of the American occupation. They were disbanded by General Gardner's replacement, Jerry Bremer, who in turn installed his own hand-picked Iraqi group—which included, as it happened, many from the original interim council. Why this was a critical mistake is unclear, since neither group enjoyed much national legitimacy. President George W. Bush clearly saw these handpicked groups as transitional, since he had decided before the war not to place exile groups in power—a stance favored by the Pentagon—and to opt instead for real Iraqi elections.

Then there is the issue of troop numbers that Woodward, oddly, does not count among the three "tragic" mistakes. There was much debate also about this decision. More troops would have meant a larger American footprint and would have risked nationalist resentment; a smaller footprint left the occupational forces spread thin, and the insurgency lethally and effectively exploited this gap.

Here we come to the real linchpin decision of the war. Secretary of Defense Donald Rumsfeld and the generals wanted the military equivalent of a one-night stand. However, the President's political plans called for the development and emergence of a democratic Iraq. This clearly was going to take time and effort. What did Bush, Dick Cheney, Colin Powell, Condoleezza Rice, Rumsfeld, Paul Wolfowitz, the National Security Council, the Central Intelligence Agency, and other interested parties have to say about this core dilemma, if anything? Did they count on the Iraqi Army to hold together? Did they underestimate the traumatization of Saddam's brutality on the institutions and people of Iraq? How did they think Sunni–Shiite tensions would be managed after years in which the Sunni minority, ruling through Saddam, had brutalized the majority Shiites?

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In truth, we do not yet know the answers to these important questions, but they should be asked of every major principal involved. It is already becoming clear, although very slowly, that quickly formed conventional wisdom was, in important respects, wrong or premature. For example, it now turns out that rather than a lack of plans for post-war Iraq, there were in fact many plans. The problem seems to have been that one was not settled on and seriously implemented. So, too, criticisms of rosy scenarios have been confounded with presidential and administration optimism that goals could be accomplished. The differences between the two are to be found in the frank assessment of risk. Conventional wisdom on this and many other subjects assumed that the case was a "slam dunk," but just how frank those assessments were remains to be determined.

In George Tenant's new book, *At the Center of the Storm* (New York: HarperCollins, 2007), he has written that "there was never a serious debate that I know of within the administration about the imminence of the Iraqi threat, [nor] was there ever a significant discussion" about the possibility of containing Iraq without an invasion. Yet in an 11 February 2007 *Fox News* interview, the much-maligned Rumsfeld aide Douglass Feith was pressed on exactly that issue:

> Chris Wallace: One final question. You say that this was all an effort at good government and, you know, that it's important to challenge the conclusions of the intelligence community. In all of your effort of good government, all your effort at challenging, did you ever make the case against going to war? Did you ever make the case that Saddam Hussein was not a threat?
>
> Feith: Yes, absolutely, and in writing and I'm ... the answer to your question emphatically is yes, and in writing, and it's been written about in many books. We put together, in fact, all of the considerations for not going to war. Secretary Rumsfeld did that. It was a memo that he worked on over a long period of time.

Hindsight bias is very powerful in circumstances in which judgments prove costly in lives; escalating partisan rhetoric reflects both worldviews and political calculations; and blame placement and avoidance are powerful motivating forces. These are the circumstances in which this country now finds itself as a result of the strategically induced carnage in Iraq. It is a difficult time at which to sort though the complexities of how we arrived at this point.

State of Denial gives us a detailed picture of what went wrong in Iraq from the standpoint of those who opposed the war in the first place. Colin Powell and Richard Armitage are principle sources in this book, and it is the latter who provides the mischaracterization of the President that is the title of the book. Also, much is heard from those who now want to distance themselves from what they see as a failed effort. As a result, the book reads throughout like the political equivalent of a daytime soap opera; we learn of the fears, complaints, rivalries, feuds, and jealousies of the chief players. Yet, regretfully, we learn much less about their policy views or, importantly, the substantive foundation underlying them.

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This will be the important role of future, more-dispassionate analyses with access to the records of the Bush White House. In the meantime, Woodward's work will remain an important, if flawed, starting point for laying out what now has become "conventional wisdom."

STANLEY A. RENSHON
The City University of New York

The America that Reagan Built *by J. David Woodard. Westport, CT, Praeger Publishers, 2006. 296 pp. $49.95.*

Richard Reeves's *President Reagan:The Triumph of Imagination* (New York: Simon and Schuster, 2005) depicts a former reporter as impressed, yet bewildered, by the elaborate pomp of Ronald Reagan's 2004 state funeral: "The man they're talking about is not the President I covered every day." J. David Woodard suggests that in fact he was. Reagan "not only changed the country, he changed the world," Woodard argues (p. 101), both as republican and Republican. His "rhetoric and character" re-energized America's founding ideals (p. 101); and in partisan terms, "the 1980 election began a rolling political realignment that changed the country from Democratic domination to Republican rule" (p. 248).

Woodard's goal is to recount America's political, social, and cultural history from "malaise" in 1979 to maelstrom in 2005. The impressively coherent narrative encompasses everything from elections and policy debates to trials of the century, hairstyles, and top television shows. If the story of the mid-1990s gives more space to O.J. Simpson than to health care reform, that, alas, is probably accurate enough, though the ambitious scope of the book ensures occasional factual errors; for example, Bill Clinton did not himself appoint Ken Starr as independent counsel (p. 191).

Certainly Woodard's judgment calls tend to favor Republican personalities and causes; this is history written by the victors, as he sees them. The portrait of Reagan himself is not starry-eyed, but his successors get less-balanced treatment. It is surely unfair, for instance, to charge Clinton with ignoring terrorism—"safety was in decline," Woodard intones (p. 199)—while excusing the September 11 attacks themselves by concluding that "the enemy had no strong organization, weapons, or money. At least that is what the president was told" (p. 214). More generally, Woodard sees Democrats as "led by a cultural elite that wanted to forget American ideals" (p. 249), and as postmodern skeptics of "the old order of rationalism, with its faith in science and unitary view of truth" (p. 240). The Republican Party in turn is modern, "comfortable with science and technology, and reliant on a heavenly foundation" (p. 240). These generalizations float over nuance—such as what drives some of those most reliant on a heavenly foundation to reject science (stem-cell research, evolution, on-site diagnosis of Terri Schiavo) and others to move their faith

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into practice on behalf of the tolerance Woodard seems to think abandons America's founding ethics.

Perhaps because of the chronological framework, the book is also not as clear as it might be on establishing causal connections between Reagan's presidency and the present day: how was it Reagan who built? And what did he build, exactly?—presumably not the postmodernism Woodard sees as the new basis for American cultural life and whose rise is thus left unexplained. The most obvious answer is that "the Republican Party had become by 2000 the majority" (p. 241). Yet evidence for that assertion is hard to come by. Indeed, while there is no good place to conclude a history book, the chosen endpoint—the early fall of 2005—seems in retrospect only a waypoint. In 2006, of course, both chambers of Congress returned to the Democrats. And even if one accepts that in 2005, the Bush administration's promise "to support democracy... was being proven in countries throughout the Middle East" (p. 243), events since hardly help that case.

On the whole, Woodard is right: the contours of today's politics were established in the 1980s. One wonders, though, if rather than a Republican "epoch," (p. 247) the result is instead what Stephen Skowronek terms "perpetual preemption" (*The Politics Presidents Make: Leadership from John Adams to Bill Clinton*, Cambridge, MA: Harvard University Press, 1997, p. 442). After all, an alternate reading of the events here details 25 years of hard choices deferred. The book begins with addiction to foreign oil, evil in Iran, budget deficits, underfunded entitlements, and violence in Afghanistan—all told, an eerie foreshadowing of recent, and future, State of the Union Addresses.

ANDREW RUDALEVIGE
Dickinson College

Commander in Chief: How Truman, Johnson, and Bush Turned a Presidential Power into a Threat to America's Future *by Geoffrey Perret. New York, Farrar Straus & Giroux, 2007. 448 pp. $27.00.*

Geoffrey Perret, who has written popular studies of generals and commanders in chief from Abraham Lincoln to Dwight Eisenhower, turns his attention to Harry S. Truman, Lyndon Johnson, and George W. Bush in this scathing attack on presidential war-making in the contemporary era. He asserts that their three wars—Korea, Vietnam, and Iraq—were unwinnable. All three presidents "at a time of high emotion... acted on their own visceral responses, ignoring the advice of the military and of major allies" (p. 4).

And he goes beyond his three main characters to offer sections on all the presidents since Truman, few of whom, he contends, promoted wise foreign or military policies. Although Perret dipped into archival materials for this sweeping survey, he tells his lively and anecdote-laden story primarily from secondary sources.

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The author's most controversial conclusion involves Truman and the Korean War when he blames some of the President's alleged geopolitical blunders on mysterious pep pills he was taking because of personal insecurities. Indeed, Perret seems to blame the Cold War on the insecure Truman's need to act aggressively against the Soviet Union.

This theme of presidential insecurity runs through *Commander in Chief*, with Johnson's insecurities relating to succeeding the popular and sophisticated John F. Kennedy, while George W. Bush continues to harbor a Daddy complex. Such pop psychology leads Perret to compare the relationship between the "emotionally needy" (p. 357) Bush and Condoleezza Rice to that between Tony Soprano and his therapist.

Grouping Korea with the later two wars poses another problem. Although the Vietnam War may have been unwinnable and the Iraq war may be unwinnable, the United States "won" the Korean War when UN forces pushed North Korea back across the 38th parallel. It only became unwinnable when Truman decided to pursue the communists into North Korea.

All three wars were not only unwinnable according to Perret, but handed easy "victories" to Russia and, especially, China. Ironically, while criticizing those in the Kennedy and Johnson administrations who saw Hanoi as a puppet of Beijing, he then proves their mistaken point by overemphasizing the role China played in North Vietnamese military and diplomatic policies. More ominously, he sees China as the ultimate winner in America's Iraq war and thus brings up the hoary American fear of the Yellow Peril.

Others have attacked the imperial (and now unitary) presidency that has led the United States into misguided undeclared wars. But few scholars have placed so much importance on the psychological makeup of the chief executives and their immediate advisers.

Perret's numerous careless errors, which may not concern the general reader, undermine his presentation: The Chinese exploded their atomic bomb in 1964 not 1965 (p. 7); the United States did not intervene in the Russian civil war in the early twenties (p. 38); the Jewish-American vote is not always slam-dunk Democratic (p. 100) as demonstrated in 1972; the Philippines did send an engineering battalion to Vietnam (p. 226); there was a Central Office for South Vietnam in Cambodia in 1970 (p. 288); and China entered the United Nations before, not after, Nixon's epochal visit in 1972 (p. 291). In addition, Perret is not completely accurate in his descriptions of the American role in cancelling Vietnamese elections in 1955 (p. 184), the reason Kennedy sent Henry Cabot Lodge to Saigon in 1963 (p. 198), the 1968 October Surprise (p. 285), and Operation Duck Hook (p. 288), among other oversimplifications.

Perret has written twelve other books, most of which received favorable reviews. His unlucky thirteenth, though provocative, well-written, and always interesting, may be the most problematic.

MELVIN SMALL
Wayne State University

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The Truth Is Our Weapon: The Rhetorical Diplomacy of Dwight D. Eisenhower and John Foster Dulles *by Chris Tudda. Baton Rouge, Louisiana State University Press, 2006. 224 pp. $39.95.*

At some point early in life, children learn the expression "sticks and stones may break my bones but words can never hurt me." Despite this reassuring cliché, words have real power. What we say matters, more in perception than intent. Nowhere is this truer than in diplomacy, where the simplicity of sticks and stones gives way to the complexity of sticks and carrots.

Chris Tudda's study of the clash between words spoken and words heard presents effectively the challenge of framing diplomatic intent through official rhetoric. He argues that in their efforts to balance multiple domestic and international audiences, President Dwight D. Eisenhower and Secretary of State John Foster Dulles were often trapped by their own words. While this comes as no surprise to anyone who has ever practiced or studied diplomacy, Tudda convincingly notes that this did come as a surprise to Eisenhower and Dulles.

This ongoing disconnect between policy as conceived and policy as heard was not a case of poor translation. Nor can this be explained away by the normal bureaucratic static that clouds communication between policymakers and policy implementers. Instead, Eisenhower and Dulles crafted particular policies with clearly intended outcomes, then undercut those policies with a rhetorical content and tone more likely to achieve the opposite result.

Tudda is an articulate writer (a comforting fact when one notes that his day job is with the Department of State). His account of the complexities surrounding the rise and fall of the European Defense Community demonstrates the difficulty of untangling all key players and events. His account of the role that diplomatic rhetoric played in the tragic 1956 Hungarian uprising is most compelling, and his discussion of mixed and missed signals in the Soviet Union's transition from Stalinist rule is clearly drawn.

Tudda's analysis does not let the Soviets off the hook. This is not a revisionist argument about peace-loving leaders in the Kremlin prepared to embrace global pacifism and coexistence if only Dulles had not been so grumpy and unyielding. However, Tudda does demonstrate how American official rhetoric unintentionally reinforced, perhaps even ensured, the political, diplomatic, and military success of particular Soviet policies and actions.

Tudda's range of research is most impressive. Also, he and his editors are part of the growing and most welcome "less-is-more" school of scholarly publishing. He packs a great deal into a small book, thanks in large part to 63 pages of footnotes for a 130-page book. He does not make the mistake of relying solely on speech transcripts, memoirs, or generic historical accounts. He is also careful to examine the cases within the cases: the multiple actions and reactions as opposed to the simplicity of pronouncement and result. Tudda also effectively draws on literature from several disciplines. Those who have studied history, rhetoric, political psychology, and international relations will find footnotes from all four disciplines.

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The book is not without flaws. There is the usual flood of 1950s acronyms, which may confuse those not familiar with the era, and there is an entire chapter titled for a Greek myth that is not recounted. For reasons not entirely clear, Tudda jumps from Eisenhower the President to Eisenhower the candidate and back again. Professors should note that Tudda does not extensively rehash biography and history. While this may pose problems for the undergraduates and all-too-many graduate students who have trouble placing Dulles in the correct decade, additional readings can be assigned, thus supporting the work of other worthy scholars.

This book does not clarify and resolve all the challenges of rhetorical diplomacy. Tudda clearly frames questions still unanswered or posed anew. For scholars who accept the inadequacy of the sticks-and-stones cliché and wish to learn more about the complex chess game of sticks and carrots, it is a good place to start.

JAY M. PARKER
Center for the Study of the Presidency

The Moral Rhetoric of American Presidents *by Colleen J. Shogan. College Station, Texas A & M University Press, 2006. 223 pp. $45.00.*

Colleen Shogan presents qualitative and quantitative evidence in order to analyze the moral and religious rhetoric of American presidents from George Washington through George W. Bush. This book is divided into three sections. The first section presents the overall argument of the book and the theoretical framework that the author uses to analyze the rhetoric of chief executives. Specifically, she argues that the dynamic political environment can influence the types of rhetorical strategies that presidents use to garner support from the mass public. As a result, presidents must be cognizant of their political surroundings before they decide to include moral and religious rhetoric in their public speeches. In some instances, moral rhetoric can enhance presidential leadership, while at other times it can hinder the ability of chief executives to govern while in office.

The second part of this study empirically analyzes the moral and religious rhetoric that is found within inaugural addresses and the annual messages of each president. The author finds that presidents since Woodrow Wilson have relied less on moral rhetoric than did eighteenth- and nineteenth-century presidents when communicating substantive policy issues to the public. Despite this trend, presidents in the twentieth century have frequently used moral rhetoric when referring to "abstract concepts such as the spiritual health of the nation or the character of the citizenry" (p. 172).

The remainder of this book presents rich case studies regarding the moral rhetoric of nine presidents. The first set of case studies focuses on George Washington, Theodore Roosevelt, and Jimmy Carter, who are referred to as

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"reinforcing moral leaders." According to the author, moral and religious rhetoric becomes a vehicle that "reinforcing moral leaders" use to communicate the moral principles and core beliefs that they value in their personal lives (p. 44). A second set of case studies explores how Thomas Jefferson, Abraham Lincoln, and John F. Kennedy avoided expressing moral and religious themes and values within some of their political speeches and the consequences of engaging in such moral restraint. Finally, the author analyzes the strategic nature of the political rhetoric of James Madison, James Buchanan, and Lyndon B. Johnson. Unlike Madison and Johnson, Buchanan failed at using moral rhetoric to build political capital that could have been used to strengthen his ability to govern the nation.

Despite the important contribution of this book to the study of presidential rhetoric, there are weaknesses that limit our understanding of the moral and religious rhetoric of presidents. First, this study fails to provide clear conceptual definitions regarding the terms "moral rhetoric" and "religious rhetoric." The author does provide in her appendix a list of keywords that she used in her content analysis of presidential speeches to demonstrate when a specific sentence contained moral and religious rhetoric. However, an explicit definition is warranted because it is unclear as to how, if at all, the author's concepts of moral and religious rhetoric relate to the concept of civil religion. Finally, there are many discussions in the case studies in which the author does not provide concrete qualitative or quantitative evidence to demonstrate the types of political consequences that occur when presidents include moral rhetoric within their public speeches. Instead, she often assumes that actual speeches by presidents have had an effect on the audience that receives them.

Overall, Colleen Shogan has written a very readable and informative book that should be of interest to both scholars and lay readers. This book also would be appropriate to use in advanced undergraduate and graduate courses in a variety of disciplines, including political science, communications, sociology, and history.

ADAM L. WARBER
Clemson University

A New Engagement? Political Participation, Civic Life, and the Changing American Citizen *by Cliff Zukin, Scott Keeter, Molly Andolina, Krista Jenkins, and Michael X. Delli Carpini. New York, Oxford University Press, 2006. 272 pp. Cloth, $74.00; paper, $19.95.*

This book stands as among the best ever written about civic and political engagement in America, and deserves a place on your shelf next to other classics such as *Who Votes*, *Voice and Equality*, and *Bowling Alone* (Raymond E. Wolfinger and Steven J. Rosenstone, *Who Votes?* New Haven, CT: Yale University Press, 1980; Sidney Verba, Kay Lehman Schlozman, and Henry E. Brady,

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Voice and Equality: Civic Voluntarism in American Politics, Cambridge, MA: Harvard University Press, 1995; and Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community*, New York: Simon and Schuster, 2000). It exemplifies model social science—as relevant as it is rigorous.

A New Engagement addresses the changing ways in which young people are civically and politically engaged, a topic that is much discussed but that has been the subject of surprisingly little systematic analysis. In the 1960s and early 1970s, many political scientists studied young people. Political socialization was all the rage then but later fell out of favor.

The sustained neglect of attention to youth was regrettable, because it meant that political scientists were poorly equipped to explain the widely documented decline in young people's political engagement over the last generation. *A New Engagement* is an important corrective to this extended period of inattention, as it is especially innovative in its discussion of people between the ages of 15 and 27—a group the authors call the DotNets. Defined as the cohort born after 1976, DotNets stand alongside the Dutifuls (those born before 1946), the Baby Boomers (born between 1946 and 1964), and Generation X (born between 1965 and 1976). These four cohorts comprise the book's cast of characters, but it is the DotNets who take center stage. As suggested by its title, *A New Engagement* is attuned to the potential for new forms of civic and political involvement among DotNets that might be missed using questions about participation that were first posed during the administration of Dwight Eisenhower.

To determine whether young people are engaging in new ways, the authors of *A New Engagement* employed a bottom-up analytical strategy. Before putting any mass surveys in the field, they convened a number of focus groups around the country to talk with DotNets about the ways they do, and do not, engage in civic and political activity. Demonstrating the multi-faceted nature of public engagement, from those conversations they gleaned a total of 19 activities. This index was then included in multiple telephone and Internet surveys. Some of the activities in the index will be familiar to students of political engagement (voting, working on a campaign), while others are new, like signing e-mail petitions and boycotting (choosing a product because you endorse the values of its manufacturer). If nothing else, these authors have provided a valuable intellectual service by expanding the scope of inquiry into civic and political engagement. The study of participation will benefit as other scholars incorporate their innovations, particularly the important distinction they draw between political and civic activity—namely, engagement that is, and is not, explicitly directed at effecting political change. Indeed, when discussing the engagement of young people, this is a critical distinction to draw, because youth are more likely to channel their energies into the civic rather than the political realm. When the full scope of engagement is considered, DotNets do not look nearly so disengaged as when we focus solely on conventional politics.

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Nonetheless, young people *are* politically disengaged, which means that their voices are easily drowned out in the public square. How might they become more engaged in politics? *A New Engagement?* provides a few suggestions—increased political discussion at home and at school tops the list—but clearly there is more to be learned. When it comes to the study of young people, political science has a lot of catching up to do. *A New Engagement?* is an excellent start.

DAVID E. CAMPBELL
University of Notre Dame

At the Front Lines of the Welfare System: A Perspective on the Decline in Welfare Caseloads *by Irene Lurie. Albany, NY, The Rockefeller Institute Press, 2006. 284 pp. $15.00.*

With hindsight, we can now see that the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 was a legislative milestone in the history of social welfare policy. From the outset, it had the makings of dramatic legislation, abolishing the main cash assistance program for low-income families—Aid to Families with Dependent Children—and replacing it with the block grant program Temporary Assistance for Needy Families that states were to use to implement welfare programs with enhanced discretion. The new policy limited the time over which recipients could receive cash assistance and put the emphasis on moving them off the rolls, largely by placing them in jobs, but also through promoting marriage. The new policy regime, therefore, of necessity involved increased case management, in which workers needed to screen, diagnose, counsel, and coach recipients to fulfill their signed welfare-to-work contracts (that is, individual responsibility plans) so that they could make the transition to a life of self-sufficiency without relying on public assistance. Ten years later, we can now see just how dramatic this change in social welfare policy has been. The number of families receiving cash assistance has been cut by more than half, only stabilizing in recent years with a slowdown in the economy. Irene Lurie's new book, excellently researched and well-written, helps us understand how this important policy change was carried out by offering evidence from a study of frontline workers. She joins a growing number of researchers who are interested in studying the revitalized role of case managers in the new welfare regime. Hers is an important contribution to what promises to be a burgeoning field of study. It is, however, narrowly focused, at the expense of more politically significant questions.

Lurie's data come from a larger study conducted in collaboration with Marcia Meyers and Norma Riccucci. Her focus is on the question of whether a policy change like welfare reform that is so dependent on frontline workers for achieving its goals would actually deliver on its promises. She notes early on in the book that she was skeptical but her research proved her wrong. Frontline

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workers embraced the goals of welfare reform and helped make it a success. Lurie builds her case for this conclusion from an impressive research design. She draws on data collected from observations about 969 caseworker–client interactions in welfare offices from multiple sites in four states—Georgia, Michigan, New York, and Texas—each with different approaches to implementing welfare. She interviewed managers as well and provides informative contextual information on each of the agency sites. But the critical data come from systematically recording observations of encounters between caseworkers and clients.

The book's narrative provides a treasure trove of insights into what case managers and clients talked about in trying to navigate the reformed world of welfare. From this analysis, we can see more clearly that the pervasive message of moving to self-sufficiency through work came through loud and clear, with only minor variations across agencies and states. Texas relied more than the other states studied on workforce development agencies to make the movement into jobs possible, and it was heavily invested in the use of state-of-the-art computerized systems of monitoring clients. Yet, the results were not dramatically different elsewhere. While case managers everywhere had access to imposing penalties for clients' noncompliance with their welfare contracts, the frontline workers generally emphasized working with clients to get employment more so than focusing on imposing sanctions. Although Michigan put greater stress on working to remove barriers to employment, child care was made more readily available across the states, while caseworkers in Georgia and Texas were not able to offer transportation services as much as those in Michigan and New York. But the overall story was one that case managers were generally engaged in working with clients to help them get off of welfare and into paid jobs.

Part of the reason for the consistency in the findings across sites and states lies in the development of routinized procedures under welfare reform. In particular, the brave new world of welfare-to-work is an increasingly computerized one that increases not only the ability of case managers to monitor the compliance of their clients but also the ability of managers and policymakers to hold implementers accountable for meeting performance goals. Case managers still have discretion on how to treat clients, but it is a discretion tightly bounded by the need to demonstrate that quotas are being met.

All of this is demonstrated in this book by a clear and convincing narrative based on thorough and competently executed research. But focusing the narrative on this one specific question decontextualizes welfare reform to the point that we risk losing sight of its significance in human terms.

Caseworkers have been effectively enlisted in the effort to reduce the welfare rolls, but to what end? To re-create the welfare poor as the working poor in the globalizing low-wage economy? It is here that future research needs to go. How is frontline worker discretion to help recipients achieve real self-sufficiency being affected by the new management systems for monitoring

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clients and case managers? What are the consequences of this intensified system of monitoring for promoting the long-run well-being of the families that are being processed in the new systems of welfare-to-work? What is the relationship of the new systems of implementation to the changing political economy? These are larger questions that this important study leaves to future research.

SANFORD F. SCHRAM
Bryn Mawr College

Hearing the Other Side: Deliberative versus Participatory Democracy *by Diana C. Mutz. New York, Cambridge University Press, 2006. 184 pp. Cloth, $60.00; paper, $20.99.*

This engagingly written and carefully researched book suggests that there may be an empirical tension between theories of deliberative democracy and participatory democracy. The very diversity in social networks that encourages discussion among people with differing viewpoints tends to stifle political participation.

Analyzing surveys and experiments, Diana Mutz explores to what extent—and with what consequences—individuals discuss politics with people who disagree with them. Some of the findings are quite striking.

Given an opportunity to name up to four political discussion partners, only about one-quarter of Americans come up with even a single person who disagrees with them about presidential candidates (p. 40). Neighborhoods and voluntary associations, favored foci of some deliberation theorists, actually engender few political discussions of any sort and are particularly barren of disagreements; workplaces produce more (p. 28). Individuals with high levels of income, education, and knowledge, the big participators in American politics, rarely talk with opponents; low-income people and minorities do so more often (pp. 30, 31).

As to consequences, Mutz does find that exposure to disagreement increases awareness of opposition arguments and rationales (p. 73) and that it modestly tends to increase political tolerance (pp. 77, 78). But there is a "dark side": exposure to disagreement also reduces voting turnout and other sorts of political participation, chiefly because people shrink from social conflict (chapter 4). Apparently we cannot optimize the conditions for participation and deliberation at the same time. What is a citizen or a nation to do?

It is a great strength of the book that Mutz takes political theory seriously. She tellingly critiques blind spots in various normative theories and offers some thoughtful suggestions about how to cope with the tension she sees between participatory and deliberative democracy. In my view, however, if we consider the core of participatory and deliberative theories more closely, while attending to possibilities for a division of labor among citizens, much of the tension vanishes.

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Mutz may, for example, underestimate the virtues of deliberation among the like-minded, as in Cass Sunstein's "enclave deliberation" (p. 127) or Jane Mansbridge's "unitary democracy." She dislikes "political balkanization" (p. 138). But much fruitful political deliberation—whether in congressional committees, neighborhood councils, or PTA meetings—involves working out how to attain shared goals. This entails no social disharmony and does not inhibit participation.

When it comes to deliberation between adversaries with conflicting goals or interests, why must citizens do that face to face? To do so can be not only unpleasant but also inefficient, as opponents redundantly recite deeply established values and beliefs that are unlikely to change. In the non-conflictual privacy of a citizen's own home, he or she can use television, newspapers, or the Internet to learn about opposing views and see his or her own position challenged (p. 145). Or friends can pass this material along. Mediated deliberation does not diminish participation. And it often works. Contending claims are frequently resolved in the fire of public debate among advocates.

Mutz acknowledges some of the merits of partisanship and notes John Stuart Mill's argument for two kinds of citizens, impassioned partisans and disinterested observers (p. 131), but she seems uneasy about encouraging a natural division of labor between the two. Nor—in order to enhance political equality, as participatory theories seek—does she explore such methods of increasing participation as mobilization-oriented political parties, election-day holidays, or state-initiated registration of voters. The effects of these measures would probably overcome any inhibitions about exposure to disagreement, if we wanted to increase such exposure.

Mutz makes eloquent arguments for diversity in human communication. But just how much political disagreement in daily life do we want or need?

BENJAMIN I. PAGE
Northwestern University

The Averaged American: Surveys, Citizens, and the Making of a Mass Public *by Sarah Igo. Cambridge, MA, Harvard University Press, 2007. 408 pp. $35.00.*

Social scientists, pollsters, and market researchers now regularly apply the techniques of scientific sampling and measurement to their work. Indeed, survey research has become the dominant methodology used to produce social science scholarship, public and political polling, and consumer research. Sarah Igo puts into historical context the way in which these now-commonplace research techniques have transformed American society over the past century. Igo's historical examination of survey research in America provides a compelling argument that the statistical data generated and disseminated by surveys have given America a new way to view itself—as a "mass public." Through

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surveys, Americans have developed a way of understanding the whole of American society, and how they measured up against (and belonged to) it.

Igo's historical analysis relies primarily on three important uses of survey research in the early to mid 1900s. These include the Lynds's "Middletown" study of Muncie, Indiana, which attempted to portray the "typical" American community; the early political polling of Elmo Roper and George Gallup; and the Kinsey reports of American sexual activity. These early efforts at employing the concepts of probability sampling and statistical measurement of human thinking and behavior became highly visible, and thus provided much fodder for discussion among the ranks of academics, the business community, journalists, and citizens. In the years after these monuments of survey research were erected, survey results would become less of a novelty and more an assumed part of American culture.

By the coming of Gallup, Roper, the Lynds, and Kinsey, American culture was ripe for being influenced by surveys and statistics. The majoritarian nature of American political culture (characterized both today and in the pre-polling era by frequent elections—local, state, and federal, as well as primaries and general elections) extends to consumerism and social life as well. It is a culture that is obsessed with public opinion's role not only in shaping politics, but also in identifying what to buy and how to think. Americans are culturally preoccupied with the "voice of the people." They value it, and rely on what others (and particularly what majorities of others) think. Americans use what others think and do as a benchmark to assess their own thoughts and behaviors.

The development of survey research techniques in the early 1900s facilitated the efficient and effective scientific measurement of the collective American mind. The work of Gallup, Roper, the Lynds, and Kinsey, among other survey pioneers, propelled this American obsession with wanting to know what others were thinking. Igo provides a wonderful historical perspective on how these pioneers popularized surveys, and in doing so, changed American culture.

Igo is correct in asserting that statistics and survey data are, in fact, "at the very heart of major public controversies" (p. 286). The reliance on data in American political, social, and business life is indeed persistent, and contributes to how the nation comes to think of itself. Less clear, however, is the assertion that "surveyors' aggregating technologies, by their very nature, placed new cultural emphasis on the center point, the scientifically derived mean and median" (p. 19), thus the title *The Averaged American*.

In many ways, our data-driven culture does as much to highlight American differences in attitudes and behaviors as it does to depict our "sameness," to document how diverse America is rather than show its homogeny. Social scientists, for example, are often as interested in variance and statistically significant differences as they are in means, medians, and modes. Market researchers seek to identify distinctions within markets (or "market segments"). Analysts of political polls are often as intrigued by differences (for example, red states

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vs. blue states) in opinion as they are by majorities. Whether the modern techniques of surveys have done more to depict an "average" mass public or a "fragmented" one is an open question.

Surveys have both enhanced and satisfied Americans' appetite for knowing what others think. In this sense, Igo is dead right. She documents the important role this has played in American cultural development. More importantly, she lays out an argument suggesting how these survey techniques have formed conceptions of the "mass public," which should serve to stimulate discussion within the social science community on the way its work affects American culture.

KEN DAUTRICH
University of Connecticut

The Fallacy of Campaign Finance Reform *by John Samples. Chicago, IL, University of Chicago Press, 2006. 328 pp. $29.00.*

John Samples has produced a thoughtful antidote to the exalted status accorded campaign finance reform. It is a worthy, post–Bipartisan Campaign Reform Act successor to Bradley Smith's *Unfree Speech* indictment of the pro-reform perspective (Princeton, NJ: Princeton University Press, 2003). In the first part of the book, Samples frames the campaign finance regulation debate in the context of the Madisonian and Progressive visions of American politics. To Madisonians, the ultimate value is the protection of individual rights, to which government poses the greatest threat. To Progressives, the ultimate value is the public interest, to which economic elites pose the greatest danger. Samples is a take-no-prisoners Madisonian. In part two, Samples makes a Madisonian rebuttal to various claims made by campaign finance reformers. In the concluding section, the politics of campaign finance regulation, both past and present, are examined. Campaign finance restrictions are cast as highly partisan and as self-serving to incumbents, rather than as reforms meant to restore integrity to the political process.

The second part of the book is the most interesting. On both theoretical and empirical grounds, Samples challenges Progressive contentions that campaign contributions are responsible for a host of political pathologies. These include the actual or apparent corruption of elected office holders; low levels of trust, efficacy, and turnout by citizens; political inequality among citizens; a conservative bias in public policy; and the lack of political competition for incumbents.

Samples offers strong arguments and evidence against the Progressives' claims, but he is generally more convincing in making the negative case that current restrictions on campaign contributions are wrong-headed than the positive case that unrestricted private campaign contributions are unproblematic. Most compelling are his contentions that campaign contributions enable speech

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and associations; that the appearance of corruption and political equality are flimsy grounds for restricting contributions; that campaign contributions have little to do with political distrust, low political efficacy, and low voter turnout; and that proposed spending limits would effectively benefit incumbents and depress levels of competition. His discussion of disclosure regulations in chapter 9, though less compelling, is thought provoking.

Somewhat less convincing is Samples's analysis that unrestricted campaign contributions are not corrupting and that the current system has not contributed to the decline in electoral competitiveness. With respect to the corruption issue, the compelling state interest allowing government regulation of campaign finance, Samples claims that "campaign contributions are a form of political participation rather than a variant of bribery" (p. 100). What makes this such a difficult issue is that contributions may be *both*. Setting aside the empirical research, are we to believe that there is no point at which the amount of a contribution from a private citizen could not induce a representative to convert some public good (say, a last-minute presidential pardon) to private benefit when that contribution would help the representative attain or achieve election? Was it not Madison himself who wrote "if men were angels"? The only real questions are what can be purchased from whom and at what price? With respect to the competition issue, are we to believe that a more than five to one advantage in campaign spending for incumbents over their challengers is not important to securing their reelection?

Though otherwise comprehensive, the most glaring fallacy of campaign finance reform is omitted in this study. Suppose that Progressives are entirely right in their diagnosis: private political money corrupts the political process. Since the First Amendment prevents private contributions from being completely outlawed, rather than restricting contributions (as Progressives favor), the prescription should be to encourage them. The surest way to decrease the corrupting value of money is to increase its supply and the surest way to increase its corrupting value is to restrict its supply.

JAMES E. CAMPBELL
State University of New York, Buffalo

***Dred Scott* and the Problem of Constitutional Evil** *by Mark A. Graber. New York, Cambridge University Press, 2006. 264 pp. $40.00.*

Specialists in constitutional law today regard *Dred Scott* as judicial review gone haywire. Wrong, says Mark Graber. *Dred Scott* was a relatively moderate application of constitutional law as it then existed. We do not know this because legal academics have conceptually changed the stakes of judicial review. They now ask it to morally improve us. On this view, Chief Justice Roger B. Taney should have ruled for Dred Scott in order to educate antebellum Americans into better values. But, Graber argues, the Constitution was (and

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is) a political (and by no means a moral) framework for keeping an imperfect republic. Judges cannot affect whether, when, or how people will resolve practices (abortion, to take a modern example) that some regard as repugnant but others do not. Judicial review can only maintain the political regime that allows debate over fundamental ends.

How social evil affects judicial review is Graber's primary concern. Graber shows, as few others have, that with respect to slavery, the Founding was the greatest Hail Mary pass in history. Between the Founding and the Civil War, many constitutional and legal ideas emerged about how to defer the ultimate fate of slavery until a moral consensus became apparent. Graber incisively shows that such metaphors as Seward's "irrepressible conflict" and Lincoln's "crisis of the house divided" effectively obscure the Civil War's profound constitutional contingency.

The final chapter—perhaps the most rewarding for those who are not legal academics—discusses the surprising relevance to antebellum politics of both the theory of consociational democracy and different variants of modern contract theory. Putting the two strands together, Graber brilliantly illuminates how the mixed regime of this period facilitated its own perpetuation until moral consensus emerged.

Some readers will, however, dislike Graber's handling of Lincoln. Graber contends that Lincoln was not as morally serious as we now consider him. Lincoln held that the Founding was broadly teleological, setting the United States on a gradual course of ultimate abolition at some unspecified time in the future. Graber treats this vision (and the theories of those legal academics who praise its implications for modern judicial review) as fanciful. In Graber's view, Lincoln's tale about the Founding gave him the license to govern on behalf of a sectional minority's moral preferences, all the while tricking up their unpleasant power grab as a restoration of the Founders' moral priorities. Graber thus shares William Riker's low opinion of Lincoln (*Liberalism against Populism: A Confrontation between the Theory of Democracy and the Theory of Social Choice*, San Francisco: W.H Freeman, 1982), though the lack of reference to Riker in his apparatus suggests that he may not know that.

One wonders, too, if Graber would have written his book the same way if he had fully explored the little-known but genuinely salient role of African American political action before the Civil War. *Dred Scott* (like *Plessy* several decades later) was the appalling outcome of a biracial litigation strategy. Chief Justice Taney's decision in *Dred Scott* can certainly be read as a furious response to an African American litigant's bold claim for freedom and citizenship before the Supreme Court. To the extent that that is true, then one has to recognize that Taney did not really re-state consociational democracy's requirements; he instead radicalized the national discussion in reaction to a litigation strategy permitted under our democracy's institutions.

In general, though, this very important work recovers surprisingly significant elements of antebellum constitutional thought. It is relentlessly discom-

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fiting, and it forces one to recognize how strongly constitutional evil drove early American political development. It deserves a very wide reading.

RICHARD M. VALELLY
Swarthmore College

Images, Issues, and Attacks: Television Advertising by Incumbents and Challengers in Presidential Elections *by E.D. Dover. Lanham, MD, Lexington Books, 2006. 190 pp. Cloth, $75.00; paper, $25.95.*

With apologies to Leo Tolstoy, E.D. Dover argues in his important new study of presidential campaign advertising that challengers are largely alike but incumbent presidents advertise their re-elections in very different ways.

Dover, a professor of political science, public policy, and administration at Western Oregon University, uses a detailed analysis of presidential advertisements from the last seven presidential elections (1980 through 2004) to argue convincingly that incumbent parties' presidential candidates can be divided into three groups, while out-party challengers show far less variation in general campaign advertising strategies.

Retrospective voting lies at the center of this argument, as there seems to be little that challengers can say in their commercials to unseat a strong incumbent (like Ronald Reagan in 1984 and Bill Clinton in 1996), and little that weak incumbents can do to convince voters to overlook their uneven performance and obtain a second term (like Jimmy Carter in 1980 and George H.W. Bush in 1992).

The so-called "surrogate incumbents," the vice presidents who try to be the successors of largely popular two-term chief executives (George H.W. Bush in 1988 and Al Gore in 2000), represent an interesting third case, where success, to Dover, seems largely dependent on whether the candidates are savvy enough to use a retiring president's legacy effectively.

In the main, advertising by popular incumbents focuses on policy accomplishments and on attacks on one's rival as an alternative to offering risky, untried schemes. Presidents with low approval ratings often have to focus on their alleged character advantages when compared to their rivals, and tend to use even more negative advertising than popular incumbents. Both types of presidential campaigns can also link their candidates to flag and country, using the symbolic trappings of the White House to maximize an incumbent's public appeal.

"Surrogate incumbents," the vice presidents seeking to move up, have to spend far more of their advertising money on introducing themselves to the public, because they are not well known. Dover faults Gore for not making greater use in 2000 of the divisive but still-popular Bill Clinton and of Gore's own role in the relatively peaceful and prosperous 1990s. "He did not seek office as vice president. Instead, he ran as if he were simply another member of Congress, indistinguishable from any other candidate" (p. 91).

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Fully three of the book's eight chapters examine the 2004 campaign and the difficulty of categorizing George W. Bush. Surveys showed he had higher approval ratings than the weak incumbents in the study and weaker ratings than the strong ones. With characteristic confidence, Bush campaigned as a strong incumbent, while Democratic nominee John Kerry's advertisements treated Bush like a weak incumbent.

Dover suggests that Kerry might have won in 2004 if he had sounded more like his nomination rival, Howard Dean, the former Vermont governor, who regularly attacked Bush over whether the Iraq war should have been fought in the first place.

In the end, Dover concludes that Bush in 2004 was a hybrid case. Perhaps the absence or presence of a nomination challenge, rather than poll standings, is a more effective way of determining an incumbent president's electoral strength.

Dover's largely effective examination of commercials election-by-election would have been stronger if he had said more about frequency of messages. Instead, the book tends to treat ads that appeared briefly or before smaller cable audiences as roughly equivalent to commercials that campaigns used extensively. Nevertheless, this work is an accessible and comprehensive presentation of important patterns in presidential campaign advertising across the past quarter century.

STEPHEN J. FARNSWORTH
University of Mary Washington

Mandate Politics *by Lawrence J. Grossback, David A.M. Peterson, and James A. Stimson. New York, Cambridge University Press, 2006. 224 pp. $70.00.*

This book tackles one of the most perplexing methodological problems in American politics: how to identify a mandate election. Previous literature argued that mandates were characterized by shifts in public opinion that are recorded in the vote choice of the electorate, but the evidence is sparse that voters are sending a policy signal when they vote in most elections. That approach is abandoned in favor of the hypothesis that mandates are "social constructions" defined by the collective perceptions of the news media and political elites. To test this hypothesis, the authors choose three good candidates for mandate elections: 1964, 1980, and 1994.

Mandates as "social constructions" is not entirely novel, and the authors do cite the innovative work by presidency scholar Patricia Conley (*Presidential Mandates: How Elections Shape the National Agenda*, Chicago, IL: University of Chicago Press, 2001), who argues that a political consensus that a mandate exists will yield greater presidential leverage over Congress than a mandate claim that is contested. Her insight is an essential theoretical building block for this volume, but what distinguishes this book is the methodological rigor

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and conceptual clarity with which Lawrence Grossback, David Peterson, and James Stimson empirically prove their point. This book offers a major advance in our understanding of mandates, and for that reason, I would predict that *Mandate Politics* will be a serious competitor for the Richard Fenno Award.

Past research on mandates focused on the president, but this volume shows that mandates affect Congress, whose members must calibrate their voting behavior in anticipation of the next election. Since they receive messages from the mass media, the empirical analysis begins with a content analysis of news stories confirming that 1964, 1980, and 1994 were, in fact, mandates. The electoral outcomes for both houses of Congress, the presidency, and governorships also indicate that those three elections were special. However, mandate perceptions change over time, since the winners stick with their mandate claims while the losers are, at first, supportive of the mandate claim but later deprecate its importance. The expectation, confirmed by the data, is that mandates have greater impact at the start of a Congress but fade with time. And members of Congress will adjust their voting behavior in terms of this temporal pattern. They will deviate from their left–right "equilibrium voting" toward the direction of the perceived mandate in the immediate aftermath of the mandate election, but eventually they will return to their normal equilibrium voting (p. 81).

For individual members, the cyclical effects are more pronounced for those who suffered a decline in their electoral margin, who are moderates in their voting, and who belong to the mandated political party. For Congress as a collectivity, the 1964 and 1994 (but not 1980) mandates emboldened the majority to change the rules in order to maximize their control over the governing process. But the evidence is mixed about the substantive impact of mandates on legislation. The clearest example of an ideological shift was the Reagan Revolution of 1980.

This volume ends on a somber note. Although mandate elections "captured the moment and swept aside delay and opposition," the more important lesson is that without a mandate, "gridlock is virtually insurmountable" (p. 184) because only mandates strengthen the majority's ability to overcome the "pivot" points of filibusters and vetoes (here the analysis relies heavily on Kieth Krehbiel's *Pivotal Politics, A Theory of US Lawmaking*, Chicago IL: University of Chicago Press, 1998).

RAYMOND TATALOVICH
Loyola University Chicago

The Presidential Agenda: Sources of Executive Influence in Congress
by Roger T. Larocca. Columbus, Ohio State University Press, 2006. 205 pp. $58.95.

Presidency scholars often conclude their assessments of a president's marginal legislative influence by citing his significance as an agenda setter. Agenda set-

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ting, then, is considered the most significant informal power of the presidency. For instance, we know that presidential initiatives receive considerable attention on Capitol Hill. However, the subfield lacks a satisfactory explanation for how informal agenda-setting influence actually plays out in the very murky legislative process. *The Presidential Agenda* is a significant step forward in helping students of the presidency and Congress understand this important presidential power.

Much previous research has been focused on the president's highly visible opportunity to influence the agenda through the annual State of the Union Address. Roger Larocca assesses the agenda influence of the president's annual address, but his formal theory and empirical results downplay its significance outside of the first two years of each presidency. Larocca instead emphasizes the informational advantages afforded the White House through legislative clearance, a process by which the Office of Management and Budget scrubs proposed legislation originating in executive branch agencies to ensure that it corresponds with the president's policy priorities. Presidents are able to utilize the policy expertise of bureaucratic agencies to directly influence, more reliably and persistently than with the annual speech, which issues move onto Congress's agenda.

Larocca persuasively argues that the use of draft legislation, while often incremental in terms of policy effect, can have significant policy impact over time, as presidents are able to alter how Congress processes the continuing agenda (for example, reauthorizations). That the effects are primarily limited to noncontroversial and complex issues is a serious drawback, however, and suggests greater presidential weakness than the author lets on in his conclusion. Some measure of each issue's significance in the formal theory and empirical analysis might have added further nuance to the author's argument. Do presidents often employ draft legislation for consequential issues?

The book is split into two parts. The first four chapters of the book present the author's formal model. Starting in chapter 1 with a terse review of the literature, Larocca delves into formal game theory in chapter 2, with emphasis on median voter models. Thankfully, the mathematical proofs for the game theory are left to appendices (there are seven); yet, much of the text within chapters 3 and 4 will prove difficult for many readers. It is unfortunate that these chapters remain as technical as they are, because the propositions developed are actually quite simple and could have been derived through a careful review of the literature and a historical treatment of "going public" and legislative clearance through case studies.

The second part, representing the book's most significant contribution, is a systematic analysis of the movement of issues through the House and Senate Commerce committees, covering the period 1979–2002. Chapter 5 is particularly illuminating, because Larocca methodically demonstrates the winnowing of bills and issues, a process left murky by most treatments of congressional agenda setting. This chapter, alone, is worth the price of admission and will

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prove of broad interest to students of Congress. Chapters 6 (the House) and 7 (the Senate) serve to empirically test Larocca's informational theory, going through each of the twelve congresses. Some readers may have a problem with Larocca's use of ordinary least-squares regression for dichotomous dependent variables. His explanation is unpersuasive because of recent advancements in interpreting coefficients in standard logistic regression. However, most readers will be reasonably confident of Larocca's findings, given his extensive use of control variables and obvious familiarity with an impressive data set. *The Presidential Agenda* is an important contribution to our understanding of presidential–congressional relations and should be widely read.

JEFFREY S. PEAKE
Bowling Green State University

The Race to 270: The Electoral College and the Campaign Strategies of 2000 and 2004 *by Daron R. Shaw. Chicago, IL, University of Chicago Press, 2006. 216 pp. Cloth, $50.00; paper, $20.00.*

In the golden age of party bosses, George Washington Plunkitt, slinging barbs from Tammany Hall, cheerfully dismissed his academic allies as unnecessary ornamentation. Many scholars are happy to keep a safe distance from party politics. However, in *The Race to 270: The Electoral College and the Campaign Strategies of 2000 and 2004*, Daron R. Shaw demonstrates that political scientists can offer valuable assistance to political campaigns by using analytic tools developed within the social sciences. Having served as adviser to both of George W. Bush's presidential campaigns, Shaw is well positioned to rebut Plunkitt's thesis. Indeed, Shaw takes advantage of a rare opportunity in political science: he is the victor who gets to write about his own history with a national campaign.

This book is no axe-grinding polemic. *The Race to 270* carefully analyzes two razor-thin campaign triumphs from the perspective of a social scientist who has full access to the results of insider campaign polling. Shaw uses his data to answer a key question in the literature on American elections: do campaigns matter? Most scholars acknowledge that campaigns affect outcomes to some degree; the problem is measuring the impact and significance of campaign activities. Shaw's solution is to reconstruct the early targeting plans for the Democratic and Republican presidential campaigns in 2000 and 2004 and then to study the allocation of media expenditures and candidate appearances, as well as the seeming effect of these activities on voters. Shaw finds that, generally speaking, the campaign organizations did in fact pursue their initial plans. Moreover, a pooled time-series analysis shows that media buys seem to nudge voter support in the intended direction, if only slightly, and the data appear to demonstrate that "candidate activities had a positive and often significant impact on both vote share and candidate favorability" (p. 137).

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Scholars who read Shaw's work closely might quibble over a few points. There is a strong tradition of case-based scholarship that deserves more attention than it receives in *The Race to 270*, and the contributions of political science to the practice of American politics might be slimmer than Shaw suggests. Still, these are minor issues compared to the major thrust of Shaw's book, which is to illustrate the manner in which presidential campaigns strategize an electoral college victory.

Presidential campaigns view the electorate not as a single unit, or even as 50 distinct state units, or even as a targeted set of "median voters" in selected states; rather, a wise presidential campaign strategist sees the political map as the intersection of battleground states and media markets. When Shaw was working for the Bush campaign, he routinely "calculated the relative cost efficiency of advertising for each of the media markets within our list of battleground states" (p. 61); the rankings that this calculation produced would then drive the campaign's media expenditures. This aspect of presidential elections—ranking media markets for persuasive efficiency—is a form of strategic behavior that many scholars have overlooked in their study of presidential elections, but one that can no longer be ignored.

The Race to 270 cannot settle the "campaign effects" debate once and for all. While Shaw deftly shows that voter support seems to follow campaign activities, scholars wedded to the notion that campaign effects wash out in the end will continue to argue that waves of support have little impact on the overall electoral tide, that the final vote count remains dependent on outside forces. Nevertheless, for students of presidential politics—both the management of campaigns and the analysis of outcomes—Shaw offers a unique contribution to the field, combining the diagnostic skills of a political scientist with the intuitive sensibilities of a political professional. The result is a unique, robust analysis of electoral college targeting.

MICHAEL JOHN BURTON
Ohio University

Unanswered Threats: Political Constraints on the Balance of Power *by Randall Schweller. Princeton, NJ, Princeton University Press, 2006. 182 pp. $29.95.*

There is no longer any strong current of opinion that believes that the theory of realism predicts national behavior in response to the threat posed by another state. Realist theory may suggest that those who refuse to balance against a potent aggressor will be penalized, but the doctrine does not say what states will actually do. This means that states can react aggressively or relatively passively. With a given amount of power, states can seek to exercise more or less than they possess. Frederick the Great exercised more power than he actually maintained in the mid-eighteenth-century European system, and barely emerged

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unscathed from the ordeal. Warren Harding chose isolation, and during his period as President, the United States clearly used much less power than it actually had. Between 1840 and 1860, industrial Britain was more temperate, both within and outside Europe, than its status as "the first industrial nation" would have permitted it to be. In 1939–41, Japan took on the United States when it could not possibly win. It follows, thus, that amounts of power do not predict decisions to use that power. Intentions do not equal capabilities.

As Randall Schweller shows, one must look inside the state to "unpack" realism and find correlates that actually determine how a state will act. In his new and stimulating book, he considers elite consensus, fragmentation, divisions between government and people, and social cohesion to provide an informal regression equation that will actually tell us what states will do. Where there is social fragmentation and the regime is vulnerable, countries will not risk balancing against a potential aggressor. Equally, if elites are divided, they will not agree on who the enemy is and may do nothing. On the other hand, if regime and people are united, and elites agree on policy, they may respond vigorously when challenged by an external actor. The book as a whole, however, focuses central attention on when states "underbalance." France and Britain in the 1930s, France from the 1870s to 1898, and Brazil and Argentina prior to their conflict with Paraguay in 1864 are cases in point. Substantial mobilizable resources in each case were left untapped as foreigners mounted threats against their victims' divided homelands. In Schweller's analysis, domestic uncertainty is generally a force for caution or hesitancy in international terms.

Yet, his analysis is consistent with a more encompassing interpretation that would examine "overbalancing" and "underbalancing" at the same time. He refrains from making broader claims, because Jack Snyder has already trodden such paths in *Myths of Empire* (Ithaca, NY: Cornell University Press, 1993). Yet, it appears that "overuse" and "underuse" of power stem from similar roots. Expansion abroad may be a stimulus to greater internal cohesion, and this may be true regardless of whether the issue is balancing or empire. Schweller is right to say that the prospect of imperial gain may unite those who are otherwise disaffected. But this may be true of "balancing" as well, if the aggressor is threading a risky course that looks dubious over the long term. Elites can muster support in either case. In the French revolutionary interlude of 1792 to 1803, France was "balancing" against Austria, but also seeking unparalleled gains. Georges-Jacques Danton negotiated treasonously with the opposing coalition in 1793 (because he was afraid France might collapse). Yet short years later, France was on the expansionist track. Schweller distinguishes between "oligarchies" that might "expand" or "balance" and democracies that will do the former, but not the latter. Yet this distinction is too simple. France and Britain (though democratic) had forms of oligarchic politics for long periods of time. Japanese citizens elected the Diet, but that did not guarantee its subservience to popular will. The fact remains that once one gets off the

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road apparently dictated by one's power, elites can go either way—they can do too much or too little.

Finally, Schweller makes a telling point against (especially offensive) realism. Morals play no role in such foreign policies, and each regional player may seek hegemony regardless of ethics. Realism is devoid of ethical content save that of preserving the state. Any German leader, so it is said, would have done what Hitler did in external relations. This applies equally to interwar Japan. Power governs, and ethics is a mere after-the-fact justification or rationalization. Offensive realism is akin to fascism in that for aggressive use of power to take place, populaces must be imbued with ideology or springs to action that stem from a mobilization regime or movement. Otherwise, they do not live up to realism's doctrinal tenets. Schweller writes: "In fundamental ways, fascism is offensive realism with a racial and social Darwinist overlay" (p. 122).

In the net, two interesting conclusions can be drawn from Schweller's excellent work. The first is that domestic uncertainties can doom the presumed outcomes of realism—in either hyper-aggression or hypo-assertion. The second is that if democratic states can control the logroll, they frequently behave distinctly and differently from other states. They can develop fellow feeling toward other nations that rises above mere short-term policy behavior. If this were not true, how does one explain the relative acceptance of America abroad at a time when so many foreigners decry the policies of its president?

RICHARD ROSECRANCE
Harvard University

Globalization and the Politics of Pay: Policy Choices in the American States *by Susan B. Hansen. Washington DC, Georgetown University Press, 2006. 231 pp. $24.95.*

In her new book, Susan Hansen makes the important argument that international integration of American state economies has not produced a "run to the bottom" in state labor costs. Moreover, higher labor costs tend to be associated with higher income, lower poverty, and less social instability. As with developed democracies as a whole, the principal adverse effect of higher labor costs is slower job creation.

The author first examines the causes of the universal (but variable) decline in state labor costs. The central measure of labor costs is an aggregate index of manufacturing wages, union density, right-to-work laws, unemployment compensation, and workman's compensation payments. Regression analyses of cross-sectional data on 1980–2000 changes in aggregate costs reveal that manufacturing exports per worker and foreign direct investment (FDI) in 1982 dollars did not suppress labor costs; in fact, there is modest evidence that more-open economies maintained higher labor costs. Most important, state labor

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costs declined the least in states with greater economic diversity and education as well as higher voting turnout and public sector unionization.

Next, the author demonstrates in 1980–2000 pooled time-series analysis of annual state data that labor costs are positively associated with gross state product, per capita income, and exports; as noted, declines in labor costs are associated with job creation and lower unemployment. As to social consequences, larger reductions in state labor costs are associated with higher poverty and social instability as well as lower voter turnout, less education spending, and more welfare outlays. The author makes the significant point that socioeconomic gains from job creation do not offset these adverse correlates of cuts in labor costs.

Despite the book's clear contributions, readers may have some questions. First, the aggregate measure of state labor costs lumps many diverse dimensions of labor markets and policy. The nature of causal connection to focal explanations arguably varies for each of these. As a result, it is hard at times for the reader to figure out why, exactly, an explanatory factor is associated or not associated with aggregate labor costs. Second, the author relies on a very small set of measures for international factors. Ideally, the set would be supplemented by additional measures as well as alternative standardizations of these. For instance, FDI is not expressed relative to state product or investment levels. Third, in the 1980–2000 change models of chapters 3 and 5, readers will note that there probably is simultaneity bias in a number of estimated relationships. The most obvious of these occurs with regard to the relationship between 1980s–1990s change in turnout and labor costs. The author explicitly theorizes that the causal arrow runs in both directions, but with the model specifications in use, readers really don't know what is causing what and to what degree.

In addition, on theory, scholars of the varieties-of-capitalism perspective have shown that liberal market economies—systems with notable generalized skills and labor market flexibility—have responded to contemporary economic pressures with further deregulation and welfare retrenchment. Organized market economies with sector-specific skills, functional labor market regulation, and generous social insurance have maintained "high labor costs"; these economies have experienced more egalitarian outcomes and socioeconomic stability at the price of stagnant job creation. One wonders if this theoretical approach might have been applied to explain not only the universal decline in U.S. state labor costs but also variations in trends across the states.

These problems notwithstanding, the book can be clearly recommended to students and scholars of political economy and policy in the American states. It is particularly appropriate for upper-level and graduate courses in these fields.

DUANE SWANK
Marquette University

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National Security and Immigration: Policy Development in the United States and Western Europe Since 1945 *by Christopher Rudolph. Palo Alto, CA, Stanford University Press, 2006. 268 pp. $55.00.*

In clearly written and compelling prose, Christopher Rudolph examines anew the different forms of international migration. He explains the policy responses to secure borders in four industrial, trading countries: the United States, Germany, France, and Great Britain. He opts for a comparative case study approach in analyzing theoretically and concretely the historical development of immigration flows as well as the steps taken in national security policy in these very diverse states from 1945 until the early part of this century.

Most contemporary scholars and/or polemicists who are in opposition to or in support of current levels of immigration utilize single-nation studies. They abide by a more conventional approach that views the formation of secure borders and immigration policies as almost purely the result of political conflict among *domestic* interest groups, institutions, individuals, and ideas. On the other hand, the book supports arguments that one must consider alongside domestic political needs and concerns. In an era of economic globalization, global terrorism, and international variables, the role of the state in structuring the context determining a country's national security interests, shaping public debate, as well as ensuring positive internal and external security policy outcomes is paramount.

It is revealed that the state has the difficult task of balancing the complex components of security and sovereignty. For example, the state encourages immigration of individuals from particular countries who possess requisite knowledge and skills to help boost the host nation's expanding trade economy, but at the same time, the state must try to control those same trans-border flows by securing and maintaining territorial boundaries. Policies are necessary to prevent terrorist attacks or discourage recruitment and entry of "undesirable" groups, which, at times include refugees or asylum seekers. The free movement of labor (including migrants seeking temporary or full-time employment) across the European Union and North America tends to generate higher gains for the global economy than the free flow of capital and trade to this point. Thus, one might assume that liberal labor policies would be continued in the United States, France, Germany, and Great Britain. Yet, popular opinion in these four states increasingly expresses overt and widespread hostility to further immigration (legal and illegal). The populous seeks to regain control of national borders and pressures these governments to revise visa, citizenship, naturalization, labor mobility, refugee, asylum, and border management policies. Why? Because of perceived immigrant threats to the host country's dominant culture, language, religion, political mores, and governance. Therefore, to appease their citizens, states create symbolic policies and laws increasing sanctions on employers who knowingly hire undocumented, illegal migrant workers. But to accommodate the need for increased labor liberalization, they don't actually hold the employers accountable at all. Citations are often not issued,

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fines are not levied, and owners/managers are not indicted as criminals, so fear of the law is eliminated. The unchecked immigration flows continue to benefit the business community and the consuming public.

Some scholars may object to a focus upon the state as the prime agent of policymaking in setting political agendas and linking domestic and international politics concerning immigration and national security. A statist paradigm doesn't account well for the nuances at play, as attempts by one group to improve its national identity and security are often accompanied by less security for other groups (immigrants). The process by which threats are constructed internationally or domestically may be under-theorized in the book. Nevertheless, add this book to your reading list.

STEVE J. MAZURANA
University of Northern Colorado

Deterring America: Rogue States and the Proliferation of Weapons of Mass Destruction *by Derek D. Smith. New York, Cambridge University Press, 2006. 210 pp. Cloth, $75.00; paper, $24.99.*

There are four broad policy responses one can pursue toward states that are acquiring new weapons capabilities: deterrence, diplomacy, defense, and preventive war. Because nuclear weapons were viewed as impossible to defend against, and preventive war was thought too costly and uncertain of success, the United States relied heavily on deterrence and diplomacy in the Cold War and the first ten years thereafter. However, conservatives long chafed at the idea that mutual assured destruction and arms control treaties constrained the United States as well as, or more than, its adversaries. When George W. Bush was elected, therefore, it was natural that there would be a demotion of deterrence and diplomacy in favor of defense and preventive war. Shortly after taking office, President Bush moved to deploy a national missile defense system and cast off the 1972 Anti-Ballistic Missile treaty, and after the terrorist attacks of September 11, preventive war was enshrined in the National Security Strategy of the United States. Interceptor missiles in the ground in Fort Greely, Alaska and American troops on the ground in Baghdad are the practical results of this theoretical revolution in foreign policy.

Derek Smith focuses on the decline of deterrence theory and U.S. relations with rogue states, particularly Iraq and North Korea. He begins with a review of deterrence theory, focusing on the difficulty of making one's commitments credible to the adversary, and the danger of extremist leaders who may not be deterrable even by credible threats of nuclear retaliation. He then discusses Iraq, from the 1991 Gulf War to the 2003 invasion. In the Gulf War, key questions include whether Iraqi chemical and biological weapons helped deter the U.S. from driving on to Baghdad and toppling the regime, and whether U.S. threats of nuclear retaliation prevented their use in defense of Kuwait. In

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Korea, the North Korean ability to threaten Seoul with artillery bombardment helped deter the United States in the 1994 nuclear crisis, and its growing nuclear capabilities only strengthened the apparent U.S. decision to eschew preventive war in this case.

Smith shifts to a discussion of alternatives to deterrence. He briefly discusses options such as missile defense, preventive air strikes, and the Proliferation Security Initiative (PSI), a multilateral effort to interdict weapons of mass destruction (WMD) on the high seas. He then turns to the topic of preventive war and discusses the difficulty in justifying it under international law, and offers some criteria for deciding when to wage a preventive war. Finally, he recommends a policy of strengthening the PSI with legal backing from the UN Security Council to make it more legitimate and universal, in an effort to develop a regime to prohibit the international transfer of WMD.

The book is a well-written introduction to deterrence theory and some of the contemporary issues that confront it. Smith is measured in his arguments and conclusions, and his recommendations for developing a global regime to prohibit and interdict WMD transfer are worth exploring. Those desiring a refresher or primer on deterrence theory and its current application will find the book of use. However, the book may miss the mark for other audiences. Scholars will find it too much of a review that does not really move the ball forward on either deterrence theory or its empirical application. Readers interested in current events may find the empirical chapters too brief to offer satisfying accounts of U.S. policy toward Iraq or North Korea, in comparison to the many works available on those topics. The book may remain too close to its origins as a very good masters thesis to really contribute much to the debate on the role of deterrence and its alternatives in current U.S. foreign policy.

ANDREW H. KYDD
University of Wisconsin

Foreign Aid: Diplomacy, Development, Domestic Politics *by Carol Lancaster. Chicago, IL, University of Chicago Press, 2006. 288 pp. $20.00.*

Much of the focus on foreign aid has been a debate on "how much" and "how effective." Carol Lancaster's compelling new book asks a different set of questions: Why is foreign aid given? What determines the foreign aid stance and preferences of donor nations? While "aid began as a temporary expedient of Cold War diplomacy" (p. 5), according to Lancaster, it has now evolved into a virtually universal norm that rich countries need to give money to poor countries. Despite that norm, aid programs continue to vary greatly in their amounts, purposes, recipients, and uses. This book convincingly demonstrates through case studies how domestic politics in donor nations affects those decisions.

The book starts off with some basic definitions and a useful conceptual framework: in domestic politics, the interplay among ideas, institutions, and in-

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terests, along with how governments organize to deliver aid, influences the ultimate shape of foreign aid decisions. The second chapter goes on to trace a general history of foreign aid since World War II. Those initial chapters provide valuable basic literacy on foreign aid and its links to development. The bulk of the book is devoted to case studies. The history of foreign aid in five nations—the United States, Japan, France, Germany, and Denmark—is analyzed using the ideas-institutions-interests-organization framework. For practitioners and academics alike, those chapters are fascinating reading and offer insights into how and why decisions actually get made. Because Lancaster has the dual vantage point of having been a government official and a professor, the analysis rings true and eschews simplistic motivations and conclusions.

Her framework proves robust in explaining some of the more interesting recent aid developments. For example, U.S. foreign aid has grown significantly under the George W. Bush administration. As the book notes, part of that growth can be attributed to the use of aid as a diplomatic weapon. This was first seen during the Cold War and is now once again present, linked to the war on terror and the aftermath of U.S. military interventions in Afghanistan and Iraq. But Lancaster also highlights an increase in U.S. aid for developmental purposes. This increase is not only a conscious effort to show the "softer side" of the United States but also a manifestation of the increasing influence of the evangelical movement and the Christian right in domestic politics. Ideas and interests combine to create an unlikely coalition between the secular left and the Christian right to help the world's poor. Strange bedfellows indeed!

Lancaster's book leaves one begging for more. Because of the focus on national politics, she omits important multilateral aid players like the World Bank. But these institutions are not mere reflections of their national shareholders; they tend to acquire a life of their own and, at least for now, the story of foreign aid cannot be told fully without them. Also, some important national case studies remain to be written. Principal among these is a detailed and objective account of the ascent of China as an aid powerhouse in Asia and Africa.

There are at least two important implications that emerge for aid effectiveness. One is highlighted in the book itself. The purposes of foreign aid have always been mixed, and it is "irrational and potentially highly misleading to evaluate *all aid* according to only one of its purposes" (p. 222, emphasis in the original). Judging the effectiveness of aid solely by its developmental impact could well lead to disillusion in donor countries.

The second implication is no less sobering. In Paris a couple of years ago, donors pledged increased aid effectiveness through aid harmonization, moving toward common policies, programs, and processes. The complexity of domestic politics and its impact on aid decisions, detailed in this work, could well render that pledge somewhat fanciful.

PHYLLIS R. POMERANTZ
Duke University

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China's Trapped Transition: The Limits of Developmental Autocracy *by Minxin Pei. Cambridge, MA, Harvard University Press, 2006. 306 pp. $45.00.*

Minxin Pei has written a scalding polemic in which he argues that China's transition to a fully marketized capitalist economy with democratic politics is "trapped." Using an institutional economics approach, he argues that while the reforms of the 1980s did bring about dramatic changes in the Chinese political economy in that decade, they stalled in the 1990s and the first part of the twenty-first century. He sees a decentralized predatory state being created by the reforms of the 1980s, with the extensive rent seeking, patronage, and other corrupt practices inherent in China's partially reformed system. The Chinese party-state selectively co-opts and represses those who might challenge it, and Pei argues that at least for the medium term, the Chinese Communist Party will be able to retain its hold on China, at a growing social cost to the Party, society, the economy, and the environment. He repeatedly criticizes the gradualist reform strategy pursued by the Chinese leadership, arguing that it does not lead to self-correcting feedback and elaboration, but rather to increasing social costs over time, and in his view, to policy immobilism, as lower levels (and in some cases, the center) refuse(s) to give up rent-seeking opportunities.

This is a powerful argument. One might ask how a China that is exhibiting very high rates of growth, dramatic increases in its international trade, and rapidly rising per capita income can be in the poor shape that Pei sees. Unfortunately, the answer to this puzzle stems from Pei having started with a false premise, upon which he then elaborates, using only one-sided evidence to make his case, and failing to engage with scholarly literature that takes a fundamentally different point of view, such as Dali Yang's *Remaking the Chinese Leviathan* (Stanford, CA: Stanford University Press, 2004).

Pei argues that China's transition is trapped because China is not making more-rapid progress to a fully marketized system with increasingly open politics—this is in fact the "trapped" part of the transition. It should have become more capitalist and more democratic than it has. But he also notes that the party-state never intended to open up the political system, and that it always proclaimed the need to hold onto the commanding heights of the economy. Therefore, a full transition was never the ruling party's goal, and since the party remains in power and powerful, a transition has not taken place. In a fundamental sense, the story he seeks to explain ends here.

Similarly, Pei develops a strong critique of gradualist economic reform. Yet he concedes that "big bang" or rapid, comprehensive reform has only taken place when communist parties have fallen from power. If the Party is still in power, what alternative does it have, realistically? What is the value of the critique of gradualism if there is no alternative?

Pei's use of evidence seems one-sided. One could hardly guess from reading this book that there have been major productivity gains in China in this

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decade, that China's Human Development Index ranks in the top half of all those ranked, and so on. In one example of his interpretation of facts to suit his purpose, he notes that from the mid-80s to the mid-90s, only 2 percent of those nominated by the Party for provincial leadership failed to win endorsement from the provincial People's Congresses. He says that even this 2 percent failure level infuriated the Party, leading it to take a series of measures to ensure that this would not happen in the future. The result was that "these tactics were so effective that 98 percent of the official nominees won" (p. 63). Not only is this is not a demonstration of effectiveness, it is an indication that the Party's rigging of the process did not change the results.

I could go on in great detail about logical flaws, one-sidedness in the use of evidence, and ignoring of evidence that doesn't serve the author's purpose. Pei's critique is powerful, but too, too one-sided.

DAVID BACHMAN
University of Washington

Japan Remodeled: How Government and Industry Are Reforming Japanese Capitalism *by Steven Kent Vogel. Ithaca, NY, Cornell University Press, 2006. 250 pp. $37.50.*

The story of Japan's postwar economic trajectory is a dramatic one indeed. It is the story of a nation that rose from the ashes of the Pacific Theater to build a system of political-economic institutions that not only produced the highest growth rates in the developed world but also offered a model of capitalist economic development that many scholars in the West argued should be emulated. The collapse of Japan's bubble economy and the long period of stagnation that followed in its wake presented a challenge that many if not most Japan observers interpreted as the end of the Japanese model. What is interesting is that beneath the chorus of voices proclaiming the end to the usefulness of Japan's approach to economic development, government and corporate leaders in that country set about the business of reforming the system that they believed was responsible for the country's postwar economic success. The story of what Japan's leaders have, and have not, accomplished to date is the subject of Steven Vogel's *Japan Remodeled.*

To tell this story, the author focuses on those three areas of Japan's political-economic institutions that best define what has come to be known as the Japanese model. The first is Japan's well-known system of labor relations, which is characterized by relative labor peace due to such things as enterprise unionism and lifetime employment. Next is Japan's financial system, in which firms rely on a main bank as their principal source of corporate finance and main banks in turn monitor the performance of firms, often providing needed capital in periods of financial need. Finally, there is Japan's system of corporate governance, in which Japanese manufacturers cultivate extensive networks with small suppliers who

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depend on these manufacturers for technology, expertise, and finance. These small suppliers in turn work to deliver needed inputs to manufacturers on time and in accordance with strict price and quality standards.

These political-economic institutions came under tremendous pressure in the 1990s, and business and government leaders responded with reforms designed to end the stagnation brought on by the bursting of the economic bubble. Vogel treats the reforms enacted by the Japanese government separately from those implemented by corporate leaders, and in each chapter, he provides a clear and thorough discussion of implemented reforms. This approach has resulted in an excellent resource for scholars interested in how the institutions of Japan's political-economic system have changed since the bursting of the economic bubble. However, Vogel's discussion is not limited to a mapping of reforms that were implemented by business and government leaders. His discussion also includes references to areas where reforms were not successful, presenting the puzzle of why some areas were reformed while others were not.

To address this problem, the author derives a set of hypotheses out of how we would have expected government and corporate elites to approach reforms in different sectors of Japan's political-economic system. This treatment involves case analysis that is punctuated with comparisons to the United States and Germany, and, with respect to corporate reforms, statistical analysis. The result is an interesting portrait of the process of economic reform in post-bubble Japan and a thoughtful explanation for why Japan reformed its institutions extensively but did not create a U.S.-style liberal economy, making the book required reading for scholars interested in the evolution of Japan's political-economic system. This is even more true for those who wish to further explore the problem of economic reform, because *Japan Remodeled* offers a set of questions that can be explored more fully, both in the Japanese context and across all developed nations that have faced similar economic reform problems.

DENNIS PATTERSON
Texas Tech University

Democracy and the Culture of Skepticism: Political Trust in Argentina and Mexico *by Matthew Cleary and Susan Carol Stokes. New York, Russell Sage Foundation, 2006. 244 pp. $39.95.*

"Trust" has become something of a buzzword in political science; trust is thought to be responsible for everything from economic development to decent governance. *Democracy and the Culture of Skepticism* speaks to that burgeoning literature, but it moves scholarship in a different direction. This book is not about "trust" in the colloquial sense (that is, an abiding conviction about someone's good character) but rather about the circumstances under which citizens have confidence in their leaders and political institutions.

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Susan Stokes and Matthew Cleary explore this topic primarily through a series of state-level surveys in Mexico (Baja California, Chihuahua, Michoacán, and Puebla) and Argentina (Misiones, Buenos Aires, Córdoba, and Mar del Plata). They then analyze these data statistically to tease out the complex relationships between confidence in institutions, faith in politicians, trust in other citizens ("interpersonal trust"), clientelism, law-abiding behavior, familiarity with candidates and parties, and participation in civic associations. They conclude that well-functioning democratic governments will inspire more faith in political institutions than they inspire in individual politicians. By contrast, societies rife with clientelism and rule breaking will have less confidence in institutions and more confidence in individual politicians, to whom citizens may feel personal loyalty. One lesson for Cleary and Stokes is that good governance is associated with skepticism about the motives and behavior of politicians, rather than inherent faith in their benevolence.

One potential weakness of *Democracy and the Culture of Skepticism* is that the correlations between mass attitudes and the quality of political institutions are really just that: correlations. Cause and effect are not entirely clear. For instance, cynicism about political life could lead to poorer institutional performance, rather than the other way around, or some third factor could be responsible for both distrust and lousy governance. Likewise, in their statistical analyses of public attitudes, Cleary and Stokes normally interpret their state-level dummy variables as proxies for institutional context. However, the true effect of living in, say, Baja California rather than in Michoacán remains debatable.

Fortunately, Cleary and Stokes are able to rule out some plausible alternative interpretations of their findings. For instance, they demonstrate that confidence in political institutions is not related to level of economic development, interpersonal trust, or the richness of associational life. In short, they squeeze a good deal of analytical juice out of their often-intriguing survey questions.

Moreover, Stokes and Cleary are not insensitive to potential criticisms. In fact, they are to be commended for acknowledging the limitations of their data, mentioning alternative interpretations, and forthrightly presenting the occasional contradictory empirical finding.

Because their surveys focus on specific regions of both countries, they are not representative of Mexico or Argentina as a whole (as the authors point out). However, the results that they report for questions that have been asked in other surveys track nicely with national-level data from those countries. The novel items in their surveys thus offer greater insight into civic culture among Argentines and Mexicans, including the extent of cynicism in Mexico. Although 96 percent of Argentines in their sample feel that it is never acceptable for a government official to accept a bribe, only 68 percent of Mexicans agree. Likewise, 69 percent of Argentines feel it is always wrong to claim government services to which one is not entitled, against only 43 percent of Mexicans. In the future, other scholars may find these sorts of data a useful resource for their own research.

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In short, Cleary and Stokes make a nice contribution to the literature on confidence in institutions, public opinion, and the quality of government. Their approach to the concept of trust is refreshing, and their findings have implications far beyond the two countries they analyze.

CHAPPELL LAWSON
Massachusetts Institute of Technology

Voting for Autocracy: Hegemonic Party Survival and its Demise in Mexico *by Beatriz Magaloni. New York, Cambridge University Press, 2006. 312 pp. $80.00.*

Beatriz Magaloni's *Voting for Autocracy* is a vigorous examination of the paradox of electoral authoritarianism, focusing on the 71-year rule of the Institutional Revolutionary Party (PRI) in Mexico. Directing her cogent theoretical arguments to a broader audience of comparativists interested in the phenomenon of single-party hegemony in such diverse cases as Egypt, Kenya, Senegal, South Africa, Taiwan, and Zimbabwe, Magaloni sheds new light on the political and economic calculus of clientelism and the use of fraud in restricted electoral systems. She provocatively counters the conventional notion that hegemonic-party regimes rely mainly on fraudulent and repressive practices to maintain their monopolies on political power. For Magaloni, fraud is a supplement and not a staple in such "electoral autocracies." Rather, she argues, a hegemonic party's true source of power derives from its ability to generate widespread support through what she describes as an "oversized governing coalition."

The seemingly inefficient strategy of seeking super-majority support is quite rational for such regimes, Magaloni argues, given that a large population of poor voters can effectively be "bought" at a low price, large majorities allow for a level of institutional manipulation that enables continued hegemony, and an aura of invincibility prevents would-be defectors and opposition groups from mobilizing support. In other words, hegemonic parties maintain super-majorities because doing so is relatively cheap, it perpetuates their power, and it demoralizes opponents. According to Magaloni, the situation began to change in Mexico as those conditions eroded. That is, PRI's undoing came from the rising cost of public support with Mexico's modernization (rising real gross domestic product per capita), an elite bargaining process that gradually restricted the PRI's control over political institutions, and a series of economic crises that emboldened political opposition to the regime. In this context, the potential to wrest votes from the ruling party led to PRI ideological splits and defections to the left, and new political activism by businessmen on the right.

The strengths of *Voting for Autocracy* are found in Magaloni's careful development of theoretical concepts and their comparative relevance, her rigorous methodological employment of game theoretic and statistical approaches, and

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her impressive compilation of electoral, opinion, and policy indicators. Indeed, Magaloni's superlative analysis of her unique and painstakingly compiled data sets will no doubt make this work an essential point of reference, not only for students of Mexico and other single-party hegemonic political systems, but also for scholars more generally interested in party politics, political economy, and comparative politics. Still, members and observers of opposition movements in electoral autocracies may take objection to Magaloni's effort to discount the use of fraud and repression as an instrument of control. Chicanery and intimidation are powerful devices that need not be used regularly to have effect. Once they have been defrauded or repressed, opposition politicians and voters have good reason to abstain from the political process or even support the regime, given a level of frustration and fear that—by design—reduces the regime's need for further fraud and intimidation. Moreover, hegemonic-party power often extends to control over the media, therefore obscuring the full extent of repression. In fact, it would be difficult to replicate Magaloni's analysis in other "electoral autocracies"—Mugabe's Zimbabwe, for example—without greater attention to the repressive tactics of these regimes. Indeed, even in the Mexican case, more attention is merited to explain the instances of massive fraud and violent crackdowns on the political opposition during the 1940s, 1950s, and 1960s, to which Magaloni pays surprisingly scant attention. Still, in Magaloni's defense, her goal is to emphasize the valid point that while all authoritarian regimes rely on the credible threat that they can and will use coercion to maintain power, elites in electoral autocracies make a particular calculation. That is, they find that the costs of political repression are greater than those of buying popular support at the ballot box. As part of the bargain, Magaloni argues, voters themselves make a strategic calculation that voting for autocracy is a rational choice.

DAVID A. SHIRK
University of San Diego

Rotten States? Corruption, Post-Communism, and Neoliberalism *by Leslie Holmes. Durham, NC, Duke University Press, 2006. 440 pp. Cloth, $84.95; paper, $23.95.*

As recent experience in the upper echelons of the World Bank attests, getting agreement on what constitutes corruption is difficult, even among self-proclaimed anti-corruption crusaders. Moreover, even if we could agree on what corruption is, measuring it is extremely difficult. For example, as Leslie Holmes tells us, "The twelve countries with the highest crime rates at the beginning of the twenty-first century were, in descending order, Suriname, Iceland, Rwanda, Finland, New Zealand, Sweden, the Virgin Islands, Guam, Norway, the United Kingdom (England and Wales), Denmark and Greenland." This rather startling list shows that official statistics on crime (including corruption) say a lot

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about general social trust in a society, and about how effective law enforcement is thought to be, and less about the incidence of crime itself. Nevertheless, most people can agree that corruption is bad, and that it is extremely pervasive, affecting politics, economics, health, security, and a broad range of human experience. Consequently, Leslie Holmes's exploration of the nature, meaning, incidence, and effects of corruption should be interesting and highly relevant to students, scholars, and policymakers in a broad range of fields.

Holmes begins with careful semantic and empirical analysis of the term *corruption*, and uses this to define his approach to cross-national research. He then draws a sophisticated picture of the types and scale of corruption in the post-communist world in general, and in Russia, China, Poland, Hungary, and Bulgaria in particular, using a combination of surveys, official documents, and media reports. The empirical base for *Rotten States* is broad, drawing on pioneering field work in a range of countries, and the result is a fascinating and detailed analysis of patterns of corruption in different spheres of public life across a range of post-communist countries, which shows an acute understanding of the nuances of this kind of research. Unfortunately, Holmes's careful comparison of approaches to corruption makes a good case that more-systematic work needs to be done, but, as he himself recognizes, it does not get us very far in developing uncontroversial measures even of changes in the level of corruption in a given country, never mind of levels of corruption in different countries.

Having described the incidence and prevalence of corruption, Holmes moves on to analyze its source. The causes of corruption are undoubtedly multiple, and Holmes follows where the evidence leads, proposing a list of psychological, cultural, and what he calls "system-related" factors. The list includes many of the usual suspects, ranging from greed, to the simultaneity of political and economic transition. In an approach that favors comprehensiveness over parsimony, it is sometimes difficult to tell precisely how Holmes himself evaluates different explanations of corruption. This is also true with the compendious assessment of anti-corruption measures. In his defense, Holmes is acutely aware of the limitations of theory and data on the subject and so is much more reticent about making stark causal claims than is the fashion in political science. Nevertheless, for the tastes of this reviewer, at least, Holmes's reticence on the relative strength of different factors is sometimes carried through to a fault.

All the same, it is clear, as the subtitle suggests, that Holmes's favorite explanation of post-communist corruption is the anti-state nature of the neoliberal ideology prevalent at the time of the collapse of communism. By equating reform with the destruction of the state, rather than with its reconstruction, neoliberalism made it difficult to establish clear rules to protect markets and property in the post-communist era. While perfectly plausible, this argument sits somewhat uncomfortably with Holmes's other clear conclusion, namely, that perceptions of corruption are much *lower* in states that implemented the

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furthest reaching economic reforms, and are *higher* in "countries that start to falter in their reforms." How to square this circle? The answer, Holmes suggests, is that the relationship between neoliberalism and corruption in post-communism is more complex than it is in the West. In the West, he sees neoliberalism as unambiguously promoting disdain for the state and contributing to rising levels of corruption (though little attention is given to proving this claim). In post-communism, by contrast, the pattern is complicated by left-over communist networks that need to be eliminated before transparency and honesty can take hold. This means, of course, that what we want is a state that is both strong *and* reformist. Thus, in the end, Holmes joins what might be called the new "post-Washington Consensus consensus"—that a strong state is not a substitute for an honest state, but both are essential to long-term growth and development. If only any of us knew how to build such states!

GRAEME B. ROBERTSON
University of North Carolina at Chapel Hill

The Foreign Policy Disconnect: What Americans Want from Our Leaders but Don't Get *by Benjamin I. Page and Marshall M. Bouton. Chicago, IL, University of Chicago Press, 2006. 223 pp. Cloth, $50.00; paper, $20.00.*

In 1992, Benjamin I. Page teamed with Columbia University professor Robert Shapiro to write *The Rational Public: Fifty Years of Trends in Americans' Policy Preferences* (Chicago, IL: University of Chicago Press, 1992). In that study, the authors argued that while individuals' opinions about political matters might fluctuate over time, Americans' *collective* public opinions demonstrate remarkable stability and cohesion. Their study offered a direct contradiction to the conventional wisdom that American public opinion is ill-informed, illogical, or disconnected from political reality.

This time, in co-authorship with Marshall M. Bouton, President of the Chicago Council on Foreign Relations (CCFR), Page revisits the argument as it relates more specifically to Americans' preferences and attitudes on such things as foreign policy goals, other countries and their leaders, the use of force, political cooperation, and economic interdependence and well-being. The authors use data taken from the 2002 CCFR national opinion survey of foreign policy attitudes, as well as data from previous iterations of the quadrennial survey, to argue that despite conventional wisdom, individual Americans have "purposive belief systems" (p. 28) that lead to stable, consistent collective foreign policy preferences.

Primarily descriptive in presenting its findings, the text will be accessible to a wide audience of readers. Page and Bouton's central claim is that collective public opinion is more stable, more consistent, and better informed than is typically assumed. Within the text, this claim is supported largely by simple de-

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scriptive analyses of the survey data; in the interest of readability, virtually all of the technical and methodological information about the data, as well as the more sophisticated analysis of the data, has been moved to the sixty pages of notes at the end of the 245-page text. With Lawrence R. Jacobs, chapter 7 advances the book's most pressing concern: that there are significant "gaps" between what the public wants and what foreign decision makers do, and that these divisions pose "serious problems for democratic values as constituting a challenge for formulating an effective foreign policy" (pp. 201, 202).

Unfortunately, the authors—in chapter 7 and throughout the text—do not move beyond the CCFR study data in making their claims. In most chapters, they do not move beyond the descriptive presentation of the survey data; there is little deep analysis of the causes and consequences of the gaps between public opinion and the policies pursued by decision makers. For example, the authors do not fully develop the relationship between the public's foreign policy attitudes and the institutional constraints operating on foreign policy decision makers. Thus, there is no discussion of the electoral considerations that constrain members of the House or the Senate when making policy decisions, nor do the authors discuss the extent to which variations in collective public opinion might be seen at the congressional district or individual state levels.

Moreover, too much important information, including many of the text's greatest insights, has been relegated to the endnotes. Even casual readers will probably find it necessary to turn between the text and the notes as they read. In most cases, the information they will be seeking is there, but the effect is to diminish the overall coherence of the text.

On balance, readers interested in understanding public opinion and the ways in which it corresponds to the attitudes and behaviors of elected officials will find that this text makes an important contribution in the area of foreign policy, while raising a series of thought-provoking questions about the role of public opinion in a democracy.

LAUREN COHEN BELL
Randolph-Macon College

The Peace of Illusions: American Grand Strategy from 1940 to the Present *by Christopher Layne. Ithaca, NY, Cornell University Press, 2006. 290 pp. $29.95.*

James Thurber said that he could not stand men who "take an untenable position and hold it." The people—and books—that are most interesting, however, are those that defend an extreme position whose tenability is not obvious. This is one of those books.

Since Woodrow Wilson's time, two opposing conceptions have contended for control of U.S. foreign policy. One is realism—the idea that national security should always hold primacy over all other goals that could conflict with it.

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The other is idealism (or liberalism)—the idea that legitimate policy goals include not only national security but all aims consistent with generally accepted American ideological principles, which have been held to include international promotion of democracy, of peace in regions of the world where it is threatened, of global economic stability, and of economic development in the world's poorer regions.

Actual U.S. policy has often been incoherent, pursuing both sets of goals at once, as in Iraq. The outcome of that adventure has made realism look good, at least for the moment. Many—though far from all—realists opposed the war on the grounds that it risked creating more security threats than it could possibly solve, and they were proven right. The idealist component of the Iraq enterprise—democratization of the Middle East—also failed.

Realists, however, are divided into two schools: offensive realists argue that conquest is comparatively easy, so states must pursue all opportunities to maximize their power relative to that of others; defensive realists claim that conquest is hard, so strong states can often secure themselves without threatening others. Christopher Layne is a pure defensive realist. He sees the United States—for a century both the world's largest economy and protected on all sides by oceans or weak states—as having no real security needs except to prevent another state from conquering any of the world's other three centers of power—Western Europe, East Asia, and the Persian Gulf. Layne argues that the United States has not, since Nazi Germany, faced such a threat: the Soviet Union lacked both the willingness to take risks and the capacity.

The appropriate U.S. grand strategy, therefore, is "offshore balancing": act overseas only when and to the degree necessary to prevent the rise of a hegemon in one of the key regions. Beyond this, U.S. interventions are more likely to create unnecessary enemies than to win useful friends.

Most realists (and most liberals) think, however, that offshore balancing has in fact been U.S. grand strategy since 1945. Despite some niggling, most would say that U.S. troop deployments to contain the Soviet Union in Europe or to reverse Iraq's conquest of Kuwait qualified as necessary balancing against real threats. Both realists and liberals would grant numerous instances of U.S. over-reaction—for which, in more cases than not, they blame each other—but would see these as deviations from the core strategy.

Layne, however, argues that ever since U.S. leaders realized that we were going to win World War II, the actual core grand strategy of the United States has been far more ambitious—to extend, further and further, American material and ideological hegemony, eventually to the point at which the United States would become a world empire and international politics as we have known it would end. (Layne's assessment matches that of many on the far left, though he and they would not agree at all on what would be legitimate or wise policy.)

Layne has three important parts of the historical record on his side. First, especially since the mid-1980s, the balance of world power has moved toward

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U.S. hegemony. The word "unipolarity" was not in common use fifteen years ago. Second, U.S. foreign policy elites have nearly always included genuine hegemonists, though they have usually spoken in coded language. Often some have been near or at levers of power. Layne is able to point to numerous statements and decisions that appear consistent with his argument. Third, generally accepted elite and public assessments of the severity of particular threats have more often than not looked overblown in hindsight.

The main thing that Layne has against him is that open, visible U.S. foreign policy discourse has virtually never been dominated by hegemonist logic—neither offensive realist nor liberal logic construed in support of hegemony. Although Layne claims that the purpose of Bretton Woods was to establish U.S. control of the world trading regime and that NATO was aimed more at forestalling the rise of a Western European great power than at containing the Soviets, such arguments were a tiny fraction of the visible policy discussions on those issues. Thus Layne must either overturn our memories of past debates or show that the ostensible reasons for many decisions were manipulated by means opaque to most U.S. elites. Layne does, on many points, remind us of striking evidence that mainstream histories either forgot or never knew, but the cumulative effect is still short of what would be needed to revise most readers' understanding of six decades of U.S. grand strategy.

The real test, however, of any work on foreign policy is whether it offers useful advice. Layne has been the most consistent and trenchant voice warning that even as—indeed, because—U.S. military superiority over everyone else has escalated, our ability to use that power without provoking balancing against ourselves has slipped away. Since 2002, the United States has provoked Iran and North Korea to escalate their nuclear weapons programs, destroyed its own legitimacy in the Muslim world, damaged, to varying degrees, its relations with almost every allied or neutral major power, and taken on so much new public and private debt as to conceivably reduce reserve mobilization potential in case of unforeseen emergency.

Scholars are now debating in the field's best journals whether policy changes in the directions that Layne advocates can reverse these losses. They should be.

CHAIM KAUFMANN
Lehigh University

The Politics of AIDS in Africa *by Amy S. Patterson. Boulder, CO, Lynne Rienner Publishers, 2006. 226 pp. Cloth, $52.00; paper, $19.95.*

Amy Patterson's book provides an informative look at the AIDS epidemic in Africa that is likely to appeal to both specialists and readers new to the topic. She paints a portrait of indifference among most African leaders and of suffering publics distracted by poverty and other grave problems. Her discussion

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of the lack of political salience of AIDS in much of Africa is the best part of the book and echoes Alex de Waal's recent *AIDS and Power: Why There Is No Political Crisis—Yet* (London: Zed Books, 2006).

Patterson is less successful in explaining the variation among African countries in their responses to the epidemic. She evaluates several hypotheses related to institutional attributes of African states, including state capacity, centralization, corruption, and stability. However, in her case studies of South Africa, Swaziland, Uganda, and Zimbabwe, she finds that no single hypothesis explains the level of effort on AIDS by different governments. She would expect that a poor country like Uganda, with its centralized government, would perform badly, but Uganda's AIDS prevention program is perhaps the continent's most well-known success story. South Africa, given its relative wealth, would be expected to have a better AIDS program, but Thabo Mbeki, the President since 1999, has famously undermined his country's AIDS efforts. Patterson tries to explain why there is no meta-answer for variations in country performance, but there could be a more unified narrative. The closest the book comes to one is a recognition that personal leadership (or its absence) by a state's top leaders has been critically important in countries like Uganda, South Africa, Swaziland, and Zimbabwe.

Patterson uses the AIDS Programme Effort Index (API) as one of the main measures for evaluating the performance of the different governments in her case studies. The API is a survey instrument that is intended to reflect a country's level of effort on AIDS on a number of criteria, including political support, policy and planning, organizational structure, legal and regulatory environment, and human rights. Scores are derived from surveys with experts knowledgeable about different components of the country's AIDS program. Scores are generated on a 100-point scale for individual components as well an aggregate. The experts base their judgments on what would constitute an ideal level of effort. In the 2003 API, the average number of respondents per component was four. This is likely to make aggregate scores troublesome for cross-country comparison. South Africa, for example, scored a 75 on the 2003 API, similar to Uganda (76) and less than Botswana (80) and Rwanda (81). However, as Patterson notes, President Mbeki has undermined South Africa's AIDS program. Mbeki denied that HIV causes AIDS and resisted the use of anti-retroviral therapy in the treatment of HIV-positive South Africans, although South Africa is the country with the second-highest number of HIV-positive people (India has the highest number). How could South Africa score so high on the API? Patterson is understandably constrained by data availability. In the absence of better indices or metrics, the API is perhaps the only option. An exploration of the API's limitations could have been helpful.

Patterson's chapter on donor responses to the epidemic is, like the rest of the book, rich in detail. Her review of the George W. Bush administration's response to the epidemic is insightful, particularly the discussion of how the politically contested nature of prevention programs has contributed to the in-

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creased focus on treatment. This chapter is more descriptive than explanatory. She addresses donor motivations in passing, and because her final chapter is a call for greater political commitment, more discussion of political mobilization dynamics in donor countries would have been useful. For readers trying to get a handle on why African governments have had such difficulty dealing with the epidemic, Patterson's book is a good introduction.

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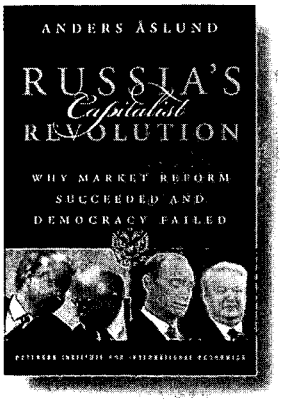

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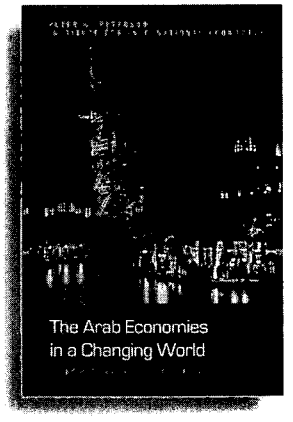

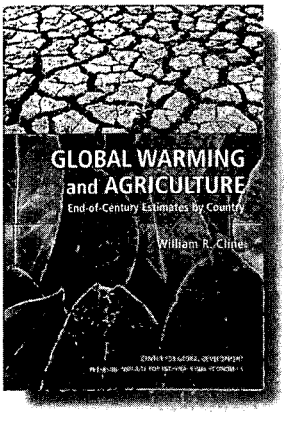

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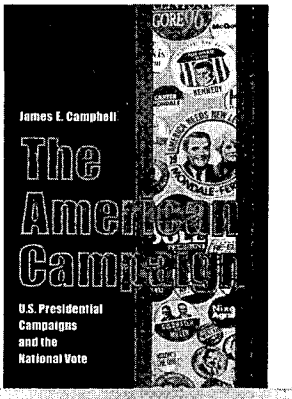

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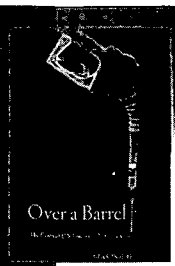

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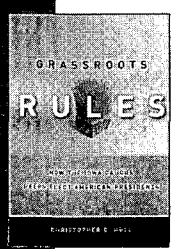

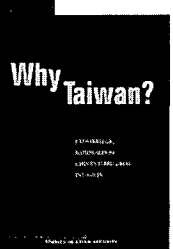

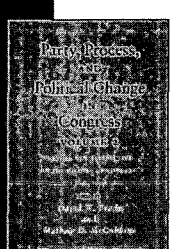

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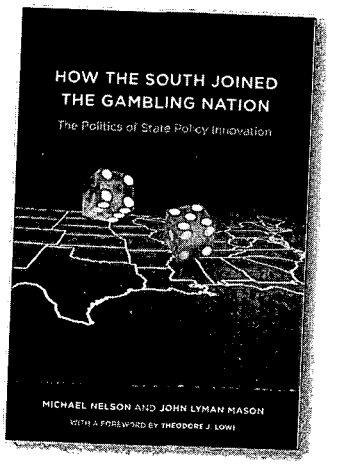
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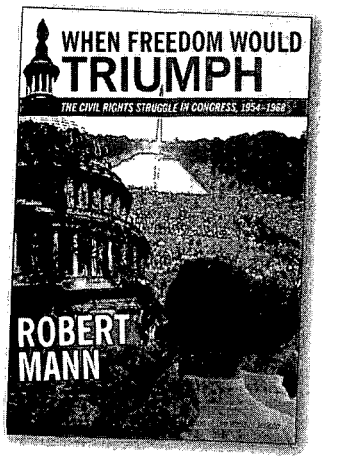

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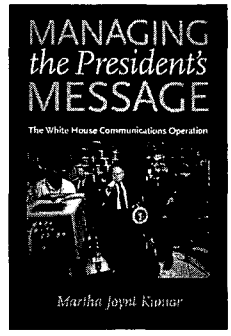

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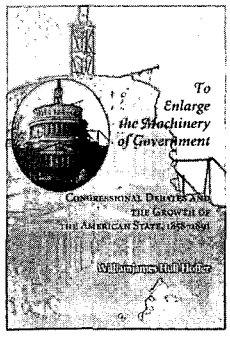

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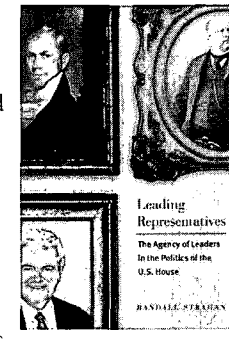

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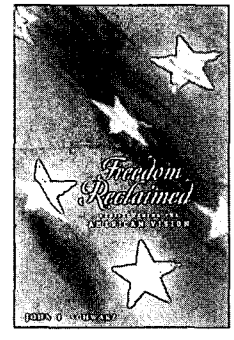

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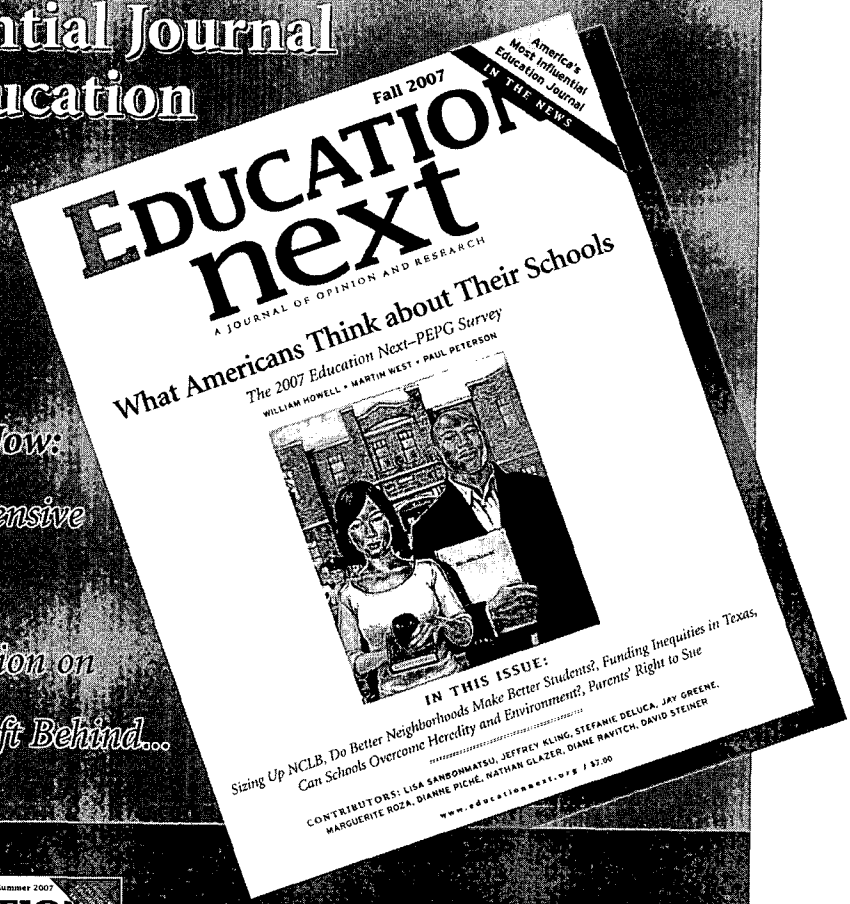
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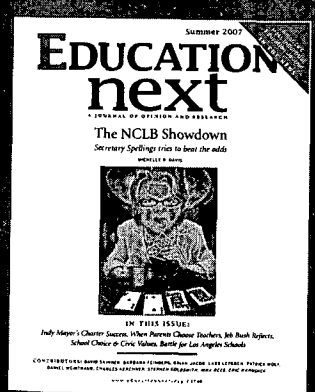
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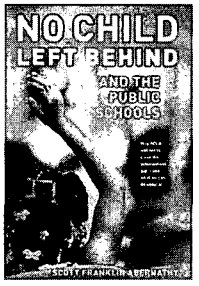

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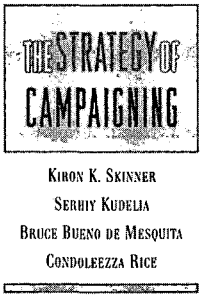

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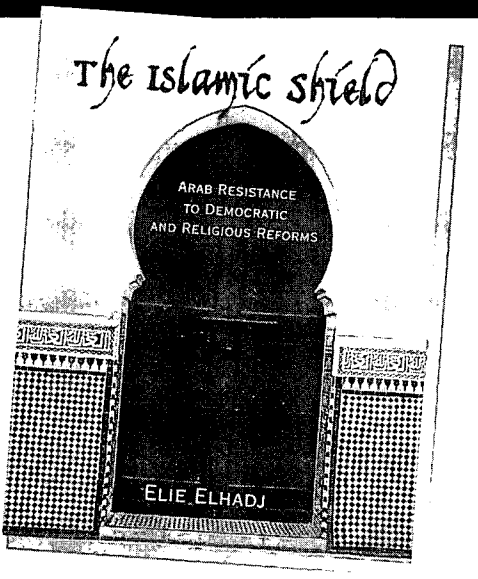
Is Democracy possible under Islam?

An examination of the estrangement between Washington and the Muslim masses

While politicians and media pundits debate the success of U.S. attempts to instill a democratic government in Iraq, author and social scientist Elie Elhadj, explains why thoughts of a democratic Arab nation are nothing but fantasy. "Arab people are characterized by a culture of obedience to hierarchical autocratic authority, in the home, school, mosque, work-place, and the nation at large," Syrian-born Elhadj states. "Western-style democracy can never fill this cultural mandate." Elhadj continues. He explains why democratic ideology cannot defeat Islamic theology and how constant preaching by Islam's Ulama instructing Muslims to blindly obey their leaders has contributed to creating an attitude of political quietism in Arab societies. Except for small minorities of Jihadists and Western influenced professionals, the masses, afflicted by poverty, illiteracy, ill health and a fatalistic belief in predestination are politically quietist, Elhadj says in his book. Using Syria and Saudi Arabia as the archetypical Arab governments, The Islamic Shield outlines the numerous reasons why genuine democratic reforms are not likely to emerge in Arab countries for a very long time, if ever. Instead, Elhadj proposes that a benevolent dictatorship may be a more realistic expectation, especially since democratic elections are more likely to result in the election of a theocratic dictator rather than a secular, democratic one. A benevolent dictatorship would fulfill the goal of reducing Arab rulers' cruelty, which fans the flame of Islamist extremism and Jihadism, he states. Jihadism and its causes are examined in detail. Elhadj makes the case that Jihadist terrorism is fueled by the humiliation and frustration that results not only from tyrannical Arab rule, but also from the perception of biased American policies in the Middle East. Combined with the growing influence from extremist factions within Islam, these oppressions form a vicious cycle of violent confrontation, Elhadj says. "What Islamist extremism



does is to turn political frustrations into religious crusades." The United States may even have created a set-back for themselves in the effort to democratize the Middle East, Elhadj says. As the United States deposed the Arab World's most secular regime in Iraq, a theocratic leadership aligned to Tehran emerged with potentially far-reaching regional political and religious consequences.

About the Author: Elie Elhadj is a banker with 30 years of experience in New York, Philadelphia, London and Riyadh, Saudi Arabia. For most of the 1990's, Elhadj was chief executive officer of a major Saudi bank. At age 54, he joined London University's School of Oriental and African Studies to read Islamic history and political economy attaining a Ph.D Degree. His doctoral dissertation addressed issues of food self-sufficiency and water politics in the Middle East.

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In this issue . . .

The U.S. Response to the Crises in Rwanda and Darfur

"Unlike the Clinton administration during the Rwanda crisis, the Bush administration—after some initial hesitancy to use the rhetoric of genocide—did not perceive this semantical move as conferring an obligation to intervene in Darfur. . . . The political pressure on the Bush administration to actually intervene in Darfur . . . was considerably less than that which the Clinton administration reasoned would have been directed toward it, had it admitted genocide was occurring in Rwanda."

Eric A. Heinze, University of Oklahoma

The Executive Branch and the State Secrets Privilege

"Although the decision [*United States v. Reynolds*] remains the principal citation for the [state secrets] privilege, the circumstances of the case provide powerful evidence that it was poorly and unwisely decided and should not be relied on to sustain independent and unchecked executive power. . . . To defer to agency claims about privileged documents and state secrets is to abandon the independence that the Constitution vests in the courts and place in jeopardy the individual liberties that depend on institutional and public checks."

Louis Fisher, Library of Congress

Washington Benefited from the UN's post-September 11 Response to Terrorism

"The Security Council's response to terrorism since 11 September 2001 has been in a different league than its response prior to the attacks. The acknowledgement of self-defense as a state's legitimate response to terrorism, the sweeping obligations put on all member states by Resolution 1373, and the formation of and response to the CTC [Counter-Terrorism Committee] are all firsts in UN history."

Hilde Haaland Kramer and Steve A. Yetiv, Old Dominion University

Authoritarianism in the Middle East and North Africa

"Domestic structural forces interacted with institutional legacies to squelch the democratic impulse that was apparent in Egypt, Tunisia, Algeria, and, to a degree, in Syria in the late 1980s and early 1990s. Economic reforms facilitated the transformation of the social base of the regimes by providing incumbent elites with resources to construct distributional coalitions . . . not interested in transparency or democracy."

Stephen J. King, Georgetown University

The United Kingdom and the European Convention on Human Rights

"The Labour Party had only a vague idea of how the Human Rights Act would affect its ability to enact other key elements of its platform. . . . The result was the hasty passage of a bill that Labour leaders have since regretted. . . . None of the key decisions culminating in incorporation [of the European Convention on Human Rights] were governed by a clear understanding of basic facts or their implications."

Kendall W. Stiles and Deborah Wells, Brigham Young University

. . . and 33 book reviews

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THE ACADEMY OF POLITICAL SCIENCE
475 Riverside Drive, Suite 1274 · New York, NY 10115-1274
(212) 870-2500 · FAX (212) 870-2202 · www.psqonline.org

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